

NO. 50785-4-II

**IN THE COURT OF APPEALS OF THE
STATE OF WASHINGTON, DIVISION II**

In re the Personal Restraint Petition of

PAUL BUFALINI,

Petitioner.

RESPONSE TO PERSONAL RESTRAINT PETITION

ROBERT W. FERGUSON
Attorney General

JOHN J. SAMSON, WSBA #22187
Assistant Attorney General
Corrections Division OID #91025
P.O. Box 40116
Olympia, WA 98504-0116
(360) 586-1445
johns@atg.wa.gov

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I. STATEMENT OF THE CASE

A. The Superior Court Sentenced Bufalini under the Drug Offender Sentencing Alternative Statute

Bufalini was convicted of multiple offenses in 2015. Exhibit 1, (Felony Judgment and Sentence).¹ The most serious crime had a standard sentencing range of 63-84 months. Exhibit 1, at 3. Rather than imposing a standard range sentence, the superior court sentenced Bufalini under the Drug Offender Sentencing Alternative (DOSA) statute. Exhibit 1, at 8.

As part of the DOSA sentence, the superior court imposed a term of confinement equal to one-half the midpoint of the standard range, and a term of community custody equal to the second-half of the midpoint of the standard range. RCW 9.94A.662(1). Here, the midpoint of the standard range for Bufalini's most serious crime was 73.5 months. Exhibit 1, at 3. The court sentenced Bufalini to serve 36.75 months in confinement, followed by 36.75 months in community custody. Exhibit 1, at 8. The sentence also required Bufalini to complete the DOSA treatment program. Exhibit 1, at 9; *see also* RCW 9.94A.662(2) ("During incarceration in the state facility, offenders sentenced under this section shall undergo a comprehensive substance abuse assessment and receive, within available resources, treatment services appropriate for the offender.").

¹ The Respondent's referenced Exhibits 1-15 are attached to the Second Declaration of John Samson, submitted along with this response.

The sentence and the statute expressly required the Department to reclassify the sentence back to a standard range sentence of 73.5 months if Bufalini failed to complete or was administratively terminated from the treatment program. Exhibit 1, at 9; RCW 9.94A.662(3) (“An offender who fails to complete the program or who is administratively terminated from the program shall be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing court.”).

B. The Department Transferred Bufalini to Partial Confinement, but Bufalini Committed a Major Infraction that Resulted in his Return to Total Confinement

During the term of confinement, the Department transferred Bufalini to a work release facility pursuant to RCW 9.94A.728(1)(e). Work release is a form of partial confinement served during the term of confinement. RCW 9.94A.030(8) (“‘Confinement’ means total or partial confinement.”); RCW 9.94A.030(36) (partial confinement includes work release). While on work release status, Bufalini remained a prisoner serving the term of confinement. RCW 72.09.015 (the term “inmate” includes offender on work release); RCW 72.65.010 (“prisoner” in work release means a person sentenced to confinement); RCW 72.65.200 (a prisoner may participate in work release only if authorized by the sentence or statute); *see also State v. Estrella*, 115 Wn.2d 350, 357, 798 P.2d 289, 292 (1990) (recognizing work release is part of sentence of confinement).

A condition of his participation in work release required Bufalini to submit to random urinalysis (UA) drug testing. Exhibit 2 (Acknowledgement of Drug Testing); Exhibit 3 (Excerpt Resident Handbook, page 40 and signature page); Exhibit 4 (DOC Policy 420.380 Drug/Alcohol Testing). On December 11, 2016, Bufalini tested positive for use of a controlled substance. Exhibit 5 (Incident Report); Exhibit 6 (Work Release Major Infraction Report). Two officers witnessed the positive result. Exhibits 5 and 6. Although Bufalini denied using drugs, he admitted that the drug test showed a positive result. Second Declaration of Lobsenz, Appendix A, at 18-19 (“MR. BUFALINI: Well, I mean, it states what happened. That’s the, that’s the bad part. I mean, the UA cup stated that I yielded a positive UA.”).

Bufalini was charged with a serious disciplinary infraction under WAC 137-25-030 (752) (“Possessing, or receiving a positive test for use of, an unauthorized drug, alcohol, or intoxicating substance.”). Exhibit 7 (Work Release Notice of Allegations). The Department conducted a disciplinary hearing on December 20, 2016, to determine whether Bufalini committed the infraction, and to determine the appropriate sanction. Second Declaration of James Lobsenz, Appendix A. The hearing officer received evidence that two officers witnessed a positive result for an opiate drug from Bufalini’s drug test. Appendix A, at 17-18. Although

Bufalini's denied using drugs, he admitted that the drug test showed a positive result. Second Declaration of Lobsenz, Appendix A, at 18-19. The hearing officer found by a preponderance of the evidence that the drug testing policy had been followed, that the drug test produced a positive result, and that Bufalini was guilty of the infraction. Appendix A, at 20. The hearing officer sanctioned Bufalini to a loss of good time, and terminated his work release status. Appendix A, at 23-24; Exhibit 8 (Hearing and Decision Summary Report). An appeals panel affirmed, determining that the drug testing protocol was followed, that the positive result was observed by two witnesses, and that there was no requirement for further testing under the policy. Exhibit 9 (Appeals Panel Decision). Bufalini then continued serving his term of confinement in prison.

C. Separate from the Work Release Infraction, Bufalini was Administratively Terminated from the Treatment Program, and the Department Reclassified his DOSA Sentence Following a DOSA Revocation Hearing

Separate from the work release infraction hearing, clinical staff administratively terminated Bufalini from the DOSA treatment program. As a result, Bufalini was charged with having been terminated from the DOSA treatment program. Exhibit 10 (Notice of Allegations); *see also* WAC 137-25-025 (762) ("Failing to complete or administrative termination from a DOSA substance abuse treatment program.").

The Department first conducted a DOSA revocation hearing on January 4, 2017, to determine whether Bufalini had been terminated from the treatment program and, if so, whether the Department should reclassify the DOSA sentence as required by RCW 9.94A.662(3). Second Declaration of James Lobsenz, Appendix B. The hearing officer determined by a preponderance of the evidence that Bufalini had been administratively terminated from the treatment program, and that the DOSA sentence should be reclassified. Exhibit 11 (Hearing and Decision Summary Report). However, the Department vacated the January 2017 decision and remanded for a new DOSA revocation hearing because Bufalini had not been informed of his right to request counsel for the DOSA revocation hearing. Exhibit 12 (Letter dated February 8, 2017).

The Department again charged Bufalini with having been administratively terminated from the treatment program. Exhibit 13 (Notice of Allegations). The new notice specifically informed Bufalini of the right to request counsel for the DOSA revocation hearing. Exhibit 13. The Department conducted the second DOSA revocation hearing on February 22, 2017 and March 1, 2017. Second Declaration of James Lobsenz, Appendices C and D. At the new DOSA revocation hearing, Bufalini requested the appointment of counsel, and the hearing officer considered Bufalini's request. Exercising his discretion, the hearing officer

determined that counsel was not necessary because Bufalini was able to represent himself and the issues in the hearing were not complex. Second Declaration of James Lobsenz, Appendix D, at 8.

After reviewing the evidence of Bufalini's termination, the hearing officer found by a preponderance of the evidence that Bufalini had been terminated from the DOSA treatment program. Second Declaration of James Lobsenz, Appendix D, at 9, 14-18, and 46-48. In reaching this finding, the hearing officer noted that the discharge summary from the treatment program staff stated that Bufalini "had not developed the motivation or desire to stay away from drugs and drug activity," "made little progress in attitude, demeanor and efforts towards recovery," "struggled to fully engage in treatment," and did not complete outpatient treatment. Appendix D, at 46-47. The hearing officer specifically indicated his decision was not based on the positive result of the urinalysis drug test. Appendix D, at 49.

After finding that Bufalini had been terminated from treatment, the hearing officer concluded that the DOSA sentence should be reclassified. Second Declaration of James Lobsenz, Appendix D, at 49; *see also* Exhibit 14 (Hearing and Decision Summary Report). An administrative appeals panel subsequently affirmed this decision. Exhibit 15 (Appeals Panel Decision).

II. STANDARD FOR REVIEW

To obtain relief in a personal restraint petition proceeding challenging an action by the Department of Corrections, the petitioner must show that he is under a restraint as defined in RAP 16.4(b), and show that the restraint is unlawful for one or more of the reasons set forth in RAP 16.4(c). *See* RAP 16.4(a); *In re Cashaw*, 123 Wn.2d 138, 149, 866 P.2d 8 (1994); *In re Dalluge*, 162 Wn.2d 814, 817, 177 P.3d 675 (2008). Where no prior judicial review has occurred, the petitioner is not required to make a threshold prima facie showing of actual prejudice in order to obtain review. *In re Grantham*, 168 Wn.2d 204, 214, 227 P.3d 285 (2010). However, to ultimately prevail on a claim, the petitioner still must prove prejudice from the alleged error underlying the claim. *Id.* at 215-17.

The Court reviews issues of law *de novo*. *In re Flint*, 174 Wn.2d 539, 545, 277 P.3d 657, 660 (2012). The Court reviews the actions of the Department of Corrections related to the custody and control of prisoners for an abuse of discretion. *In re Dyer*, 164 Wn.2d 274, 286, 189 P.3d 759 (2008); *In re Addleman*, 151 Wn.2d 769, 776, 92 P.3d 221 (2004); *In re Locklear*, 118 Wn.2d 409, 418, 823 P.2d 1078 (1992); *In re Whitesel*, 111 Wn.2d 621, 628, 763 P.2d 199 (1988). The Court reviews the hearing officer's decision of whether to appoint counsel for an abuse of discretion. *Grisby v. Herzog*, 190 Wn. App. 786, 789, 362 P.3d 763 (2015).

III. ARGUMENT

A. **Bufalini had no Due Process Right to Request Counsel in the Work Release Infraction Hearing**

Much of Bufalini's petition rest upon a flawed premise that he had a heightened level of process due in the work release infraction hearing. For example, Bufalini alleges that he had a due process right to counsel at the work release infraction hearing. But on work release, Bufalini remained a prisoner serving his sentence of confinement. Bufalini had no right to reside in any particular place of confinement, and the hearing did not affect a liberty interest triggering a right to counsel.

Whenever a petitioner alleges a due process violation, the threshold question is whether the challenged action deprived the petitioner of a protected liberty interest. *In re Cashaw*, 123 Wn.2d 138, 143, 866 P.2d 8 (1994). A liberty interest may arise from either the Due Process Clause or state laws. *Id.* at 144. "For a state law to create a liberty interest, it must contain 'substantive predicates' to the exercise of discretion and 'specific directives to the decisionmaker that if the regulations' substantive predicates are present, a particular outcome must follow.'" *Id.* (quoting *Kentucky Dep't. of Corrections v. Thompson*, 490 U.S. 454, 463, 109 S. Ct. 1904, 104 L. Ed. 2d 506 (1989)). A statute that establishes only procedures does not create liberty interests. *Cashaw*, 123 Wn.2d at 145.

The Due Process Clause itself did not grant Bufalini any liberty interest in his work release status. The Constitution does not guarantee a prisoner the right to remain in any particular institution within any particular state. *Meachum v. Fano*, 427 U.S. 215, 224 (1976); *Montange v. Haymes*, 427 U.S. 236 (1976); *Olim v. Wakinekona*, 461 U.S. 238 (1983). A prisoner has no protected liberty interest in either custodial classification or institutional placement. *Myron v. Terhune*, 476 F.3d 716 (9th Cir. 2007). A prisoner has no right to challenge his or her placement in a particular institution. *Pischke v. Litscher*, 178 F.3d 497, 499 (7th Cir. 1999).

Washington law also did not create a liberty interest that entitled Bufalini to request counsel at the work release infraction hearing. Washington law presumes all prisoners will serve the maximum sentence of confinement imposed by the court. *See Honore v. Washington State Board of Prison Terms & Paroles*, 77 Wn.2d 697, 700, 466 P.2d 505 (1970); *State v. Rogers*, 112 Wn.2d 180, 183, 770 P.2d 180 (1989). The Sentencing Reform Act does not grant any liberty interest in early release. *In re Mattson*, 166 Wn.2d 730, 214 P.3d 141 (2009) (sex offender has no protected interest in obtaining early release to community custody). Here, Bufalini was still serving his sentence of confinement when the Department placed him in work release and later returned him to prison. Bufalini was still a prisoner, and he had no liberty interest in remaining in work release.

Contrary to any argument Bufalini may make, his transfer to work release did not create a protected liberty interest entitling him to a due process right to counsel. RCW 9.94A.728(1)(e) authorizes the Department to allow an offender to serve “[n]o more than the final six months of the offender’s term of confinement” in work release. However, the Supreme Court determined that RCW 9.94A.728 itself does contain any substantive predicates that are necessary to create a protected liberty interest. *See Mattson*, 166 Wn.2d at 737-41 (denial of a transfer to community custody did not violate due process because RCW 9.94A.728 did not contain the substantive predicates necessary to create a liberty interest). Consequently, RCW 9.94A.728 does not create a liberty interest.

Similarly, none of the other statutes governing work release created a liberty interest that would give Bufalini a due process right to counsel in a work release infraction hearing. *See* RCW 72.65.010 through 72.65.900. Instead, the statutes grant the Department broad discretion. RCW 72.65.100 (“The secretary is authorized to make rules and regulations for the administration of the provisions of this chapter to administer the work release program.”). The only limitations on this discretion is that work release must be authorized by statute or the sentence, and may not be more than six months. RCW 72.65.200; RCW 9.94A.728(1)(e). The statutes do not create a liberty interest entitling Bufalini to due process.

The work release infraction hearing was a prison disciplinary hearing aimed at determining whether Bufalini had committed a major prison infraction. Like any other prison disciplinary proceeding, Bufalini had no due process right to request counsel in the infraction hearing. *Wolff v. McDonnell*, 418 U.S. 539, 569-70, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974); *Arment v. Henry*, 98 Wn.2d 775, 781-82, 658 P.2d 663 (1983).

The work release infraction hearing concerned only a limited liberty interest because the hearing resulted in a sanction of loss of good time. *See In re Gronquist*, 138 Wn.2d 388, 397, 978 P.2d 1083 (1999) (limited liberty interest at issue where a hearing results in the loss of good time). But in hearings involving such a limited liberty interest, due process is satisfied if the inmate receives advance written notice of the charges, an opportunity to call witnesses and present documentary evidence, and a statement by the factfinder of the evidence relied upon and the reasons for the disciplinary actions. *Wolff*, 418 U.S. at 563-66; *In re Gronquist*, 138 Wn.2d at 396-97. Findings that result in the deprivation of such a limited liberty interest satisfy due process if there is some evidence which supports the decision. *Superintendent Massachusetts Correctional Institution v. Hill*, 472 U.S. 445, 105 S. Ct. 2768, 86 L. Ed. 2d 356 (1985). There is no right to counsel in such hearings. Simply put, Bufalini had no right to counsel at the work release infraction hearing.

Bufalini asserts such a right exists under *Grisby v. Herzog*, 190 Wn. App. 786, 362 P.3d 763 (2015). But *Grisby* involved an offender on community custody. *Grisby* held an offender had a right to counsel in a community custody violation hearing, but did not extend that limited right to work release hearings. *Id.*; see also WAC 137-56-180(1)(c) (no right to counsel in work release infraction hearings); *In re McNeal*, 99 Wn. App. 617, 633, 994 P.2d 890 (2000) (“We emphasize that our holding here is limited to community custody revocation hearings and does not apply to programs like work release . . . where the inmate remains confined in part in a state facility.”); *Coakley v. Murphy*, 884 F.2d 1218, 1220-21 (9th Cir. 1989) (a prisoner on work release does not have a liberty interest triggering the rights to due process before being returned to prison).

Bufalini also relies on *In re Schley*, 197 Wn. App. 862, 392 P.3d 1099 (2017) to argue that he had a right to counsel in the work release hearing. But *Schley* never held that there was a right to counsel in a prison disciplinary hearing. *Schley* recognized only a limited right to request counsel in a DOSA revocation hearing. *Schley*, 197 Wn. App. at 871-72. Moreover, the Supreme Court has just granted review of the *Schley* decision. The Department contends that even if *Schley* could be read as extending the right to counsel to prison disciplinary hearings and work release hearings, which it can’t, such a ruling would be erroneous.

B. Bufalini Received the Limited Right to Request Counsel in the DOSA Revocation Hearing When the Hearing Officer Exercised his Discretion in Deciding Whether to Appoint Counsel in the Particular Hearing

The second part of Bufalini's first claim alleges he was denied the right to counsel in the DOSA revocation hearing. But Bufalini received this right when he requested counsel, and the hearing officer exercised his discretion in deciding whether to appoint counsel for that hearing.

An offender has a limited due process right to request counsel where a hearing could result in the revocation of parole or probation. *Gagnon v. Scarpelli*, 411 U.S. 778, 789-91, 93 S. Ct. 1756, 36 L. Ed. 2d 656 (1973). This Court has extended the right to hearings involving revocation of community custody. *Grisby*, 190 Wn. App. at 811.

If the offender requests counsel, the hearing officer must consider whether appointment of counsel is warranted for the particular case. *Gagnon*, 411 U.S. at 789-91; *Grisby*, 190 Wn. App. at 811. Rejecting the contention that counsel must be appointed in all hearings the Supreme Court determined that the need for counsel in a revocation hearing derives "from the peculiarities of particular cases." *Gagnon*, 411 U.S. at 789. The Supreme Court recognized the appointment of counsel "will probably be both undesirable and constitutionally unnecessary in most revocation hearings. . . ." *Id.*

Due process does not require the appointment of counsel if the case is not complex and the offender appears capable of representing himself. *Gagnon*, 411 U.S. at 790-91. Whether counsel should be appointed in a particular case is left to the discretion of the hearing officer. *Id.*; *Grisby*, 190 Wn. App. at 789. Here, the hearing officer exercised his discretion and decided not to appoint counsel. Second Declaration of James Lobsenz, Appendix C, at 29-30, and Appendix D, at 8. The hearing officer engaged in a lengthy colloquy with Bufalini about the process for a DOSA revocation hearing. Appendix C, at 23-29. Based upon Bufalini's responses, the hearing officer determined that Bufalini was able to adequately represent himself. Appendix C, at 29. The hearing officer also determined that the hearing would not involve complex issues requiring the appointment of counsel. Appendix C, at 29-31; Appendix D, at 8. Bufalini does not show the decision was an abuse of discretion. Consequently, Bufalini does not show a violation of the limited right to due process in the DOSA revocation hearing.

Relying on *Schley*, Bufalini argues that the hearing officer incorrectly restricted the issues to be decided in the DOSA revocation hearing. But the Supreme Court has granted review in the *Schley* case. As argued in *Schley* and discussed below, the sole issue in the DOSA revocation hearing was whether Bufalini was terminated from treatment.

C. The Statute does not Require the Department to Find a “Willful” Violation in Order to Reclassify a DOSA Sentence After Termination from Treatment

In arguing that the DOSA revocation hearing involved complex issues, Bufalini contends that the hearing officer had to consider more than the issue of whether Bufalini had been terminated from treatment. Bufalini contends the hearing officer had to find a “willful” violation in order to reclassify the DOSA sentence. Bufalini is wrong.

The alternative DOSA sentence is an act of leniency authorized by the Legislature, and applied to the offender by the grace of the trial court. *State v. McCormick*, 166 Wn.2d 689, 702, 213 P.3d 32 (2009). The leniency continues only as long as the offender complies with the strict requirements of the sentence. *Id.* Because the offender has already been convicted, “an offender facing a revocation of a suspended sentence has only minimal due process rights because the trial has already occurred and the offender was found guilty beyond a reasonable doubt.” *Id.* at 699-700 (citing *State v. Dahl*, 139 Wn.2d 678, 683, 990 P.2d 396 (1999)). Due process allows revocation upon proof that the offender failed to comply with the terms of the sentence. *McCormick*, 166 Wn.2d at 705.

The Court reviews the plain language of the statute to determine the facts necessary to justify revocation. *McCormick*, 166 Wn.2d at 697. Here, in order to revoke the DOSA sentence, the plain language of the

statute requires only proof that the inmate was “administratively terminated from the program. . . .” RCW 9.94A.662(3); *see also McCormick*, 166 Wn.2d at 705 (Special Sex Offender Sentencing Alternative sentence may be revoked if the offender has failed to make satisfactory progress in treatment).

The Legislature specifically required that an inmate given a DOSA sentence must participate in a treatment program. RCW 9.94A.662(2). The statute expressly provides that if the inmate is terminated from the treatment program, the sentence must be reclassified. RCW 9.94A.662(3). That is the only fact required by the statute for revocation of the sentence. Due process does not require any further proof regarding the events leading up to termination of treatment. *McCormick*, 166 Wn.2d at 703 (due process did not require proof that the offender willfully violated the requirement of the sex offender sentencing alternative statute). Rather, the alternative “sentence may be revoked at any time if there is sufficient proof to reasonably satisfy the court that the offender has . . . failed to make satisfactory progress in treatment.” *Id.* at 705.

The issue of whether Bufalini used drugs while on work release was not relevant. The statute only required the hearing officer to determine whether Bufalini had been administratively terminated from treatment. If yes, then the statute mandated reclassification of the sentence.

Here, the hearing officer correctly determined that the issue in the DOSA revocation hearing was whether Bufalini had been terminated from the treatment program. Applying the proper standard of proof, the hearing officer determined by a preponderance of evidence that Bufalini had been terminated from the treatment program. Second Declaration of James Lobsenz, Appendix D, at 9, 14-18, and 46-48. Among other things, the treatment program's discharge summary reported that Bufalini "had not developed the motivation or desire to stay away from drugs and drug activity," "made little progress in attitude, demeanor and efforts towards recovery," "struggled to fully engage in treatment," and did not complete outpatient treatment. Appendix D, at 46-47. After finding that Bufalini had been terminated from treatment, the hearing officer concluded that the DOSA sentence should be reclassified as required by statute. Appendix D, at 49; *see also* Exhibits 14 and 15.

Emphasizing certain words of RCW 9.94A.662(3), Bufalini argues that the hearing officer must find a willful violation in order to reclassify his sentence. But the plain language of the statute contradicts this argument. The words "willfully violated" exist in the first sentence of RCW 9.94A.662(3), which governs the authority to reclassify a DOSA sentence where the offender violates conditions of community custody. If the hearing concerns a violation of a condition of community custody, as

opposed to termination from treatment, then the violation must be willful. RCW 9.94A.662(3). But this first sentence in the statutory subsection does not apply to Bufalini because he was not accused of violating a condition of community custody. Instead, Bufalini was accused of having been terminated from the treatment program. Bufalini's reclassification was therefore governed by the second sentence in the statutory subsection: "An offender who fails to complete the program or who is administratively terminated from the program shall be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing court." RCW 9.94A.662(3).

This second sentence of the statutory subsection requires reclassification of the DOSA sentence if the offender is terminated from the treatment program. RCW 9.94A.662(3). Unlike the first sentence, which conditions revocation upon the existence of a willful violation of community custody, the second sentence does not contain such a prerequisite condition. The second sentence does not require the termination of treatment be caused by a willful act. The second sentence only requires that the offender have been terminated from treatment. *See McCormick*, 166 Wn.2d at 703 (due process did not require proof that the offender willfully violated the treatment requirement of the sex offender sentencing alternative statute).

D. Bufalini's Challenges to the Admission of the Drug Test Evidence in the Work Release Infraction Hearing do not Show a Violation of Due Process Given the Limited Liberty Interest at Stake in the Prison Hearing

Continuing with the flawed premise that he had a heightened level of process due in the work release infraction hearing, Bufalini argues the admission of his drug test evidence violated due process because the test is not 100% accurate. But Bufalini's argument fails to recognize that the work release infraction hearing was actually a prison disciplinary hearing. And, as Bufalini concedes in his argument, the Washington Supreme Court has approved the use of such drug test evidence in prison hearings. Petition, at 60 (citing *In re Johnston*, 109 Wn.2d 493, 745 P.2d 864 (1987)). Given that the Washington Supreme Court has affirmed the use of such evidence, and has found it sufficient to support a prison disciplinary infraction, Bufalini cannot show a due process violation.

Numerous courts, including the Washington Supreme Court, have upheld the use of such urinalysis drug tests as evidence that a prisoner has used controlled substances. *See, e.g., Johnston*, 109 Wn.2d at 496-500 (single urinalysis test for marijuana was sufficient in prison disciplinary hearing); *Smith v. State*, 250 Ga. 438, 298 S.E.2d 482 (1983) (urinalysis test was sufficiently reliable for revocation hearing); *People v. Walker*, 164 Ill. App. 3d 133, 517 N.E.2d 679 (1987) (same); *Penrod v. State*, 611

N.E.2d 653 (Ind. Ct. App. 1993) (same); *Somers v. State*, 368 S.W.3d 528, 537 (Tex. Crim. App. 2012) (recognizing similar urinalysis tests have been accepted as reliable and admissible in state and federal courts); *United States v. Penn*, 721 F.2d 762, 766 (11th Cir. 1983) (single drug test was sufficient to support violation finding) (cited with approval by *State v. Anderson*, 88 Wn. App. 541, 544, 945 P.2d 1147 (1997)).

The work release infraction hearing constituted a prison disciplinary proceeding. Bufalini was still a prisoner serving a term of confinement, and he had no constitutionally protected interest in remaining on work release status. As argued above, the limited liberty interest at stake in the hearing (the loss of good time) entitled Bufalini only to minimum due process. The admission of the drug test evidence in the work release infraction hearing complied with the minimum level of process due in such a hearing. *Johnston*, 109 Wn.2d at 496-500.

In challenging the reliability of the drug test evidence, Bufalini relies on hearsay, rather than competent proof. *See, e.g.*, Declaration of David Bufalini and Appendix A. The Court should not consider this hearsay evidence. *Gronquist*, 138 Wn.2d at 396 (the petitioner must support claims with competent evidence, not hearsay). But even if the Court were to consider Bufalini's hearsay evidence, Bufalini still fails to show a due process violation.

Bufalini faults the evidence for not being “100% accurate.” But even in criminal proceedings, no case requires evidence to be “100% accurate” for the evidence to be admitted. Moreover, the *Johnston* Court specifically rejected such an argument in prison disciplinary hearings, holding that the evidence satisfied the “some evidence” standard required by due process. *Johnston*, 109 Wn.2d at 497. The Court rejected the argument that courts should apply a stricter standard, such as *Frye*, to judge the admissibility of evidence in a prison hearing. *Id.* at 498. The *Johnston* Court recognized that while some experts might disagree about the reliability of the drug test, such disagreement did not show a due process violation in the prison context. Since Bufalini’s drug test evidence was admitted in a work release infraction hearing (*i.e.*, a prison hearing), the evidence complied with due process.

E. Bufalini Must Show Bad Faith in Order to Prove the Failure to Preserve Evidence Violates Due Process

Citing to *Arizona v. Youngblood*, 488 U.S. 51, 109 S. Ct. 333, 102 L. Ed. 2d 281 (1988) and *State v. Wittenbarger*, 124 Wn.2d 467, 475, 880 P.2d 517 (1994), Bufalini also argues the Department violated due process by not preserving the drug test evidence for subsequent testing. Bufalini does not show a due process violation for at least two reasons.

First, there is no showing that due process required the Department to preserve evidence used for prison disciplinary hearings such as the work release infraction hearing. Although the Courts have recognized a due process right to the preservation of potentially exculpatory evidence in the context of a criminal trial, the full panoply of rights available in a criminal trial do not apply to hearings conducted in the prison context. *See Wolff*, 418 U.S. at 558; *In re Whitesel*, 111 Wn.2d 621, 630-31, 763 P.2d 199 (1988). Given the minimum level of process due in the prison hearing context, Bufalini does not show that due process required the Department to preserve the drug test evidence in this case.

Second, even if the *Youngblood* standard applied in the prison context, Bufalini fails to show bad faith. To show a due process violation based upon the failure to preserve potentially exculpatory evidence, the petitioner must prove that the state officials acted in bad faith. *Youngblood*, 488 U.S. at 58; *Villafuerte v. Lewis*, 75 F.3d 1330, 1340 (9th Cir. 1996); *United States v. Cooper*, 983 F.2d 928, 931 (9th Cir. 1993); *United States v. Sherlock*, 962 F.2d 1349, 1355 (9th Cir. 1989). Even if the failure to retain evidence was an intentional act, that fact alone does not demonstrate bad faith. “Neither *Youngblood* itself, nor its organizing principle, suggest that the act by which the potentially exculpatory evidence is destroyed need be inadvertent.” *United States v. Gallant*, 25 F.3d 36, 39 n. 2 (1st Cir. 1994).

Also, the alleged failure to comply with established policy does not show bad faith. *United States v. Rambo*, 74 F.3d 948, 954 (9th Cir. 1996).

Here, Bufalini presents no allegation or evidence that state officials acted in bad faith. The record shows the Department complied with prison policy in administering the drug test. *See, e.g.*, Exhibit 4 (hearing officer finding by a preponderance of the evidence that the drug testing policy had been followed); Exhibit 9 (affirming that the policy had been followed). There is no evidence that state officials acted in bad faith. Consequently, Bufalini cannot show a due process violation.

F. The Department’s Authority to Reclassify a DOSA Sentence in Accordance with the Statute and Judgment and Sentence Does Not Violate the Separation of Powers Doctrine

“The doctrine of separation of powers comes from the constitutional distribution of the government’s authority into three branches.” *State v. Moreno*, 147 Wn.2d 500, 505, 58 P.3d 265 (2002). The state constitution establishes three branches of government; the legislative, the executive, and the judicial, and each branch wields only the power it is given. *State v. Bramme*, 115 Wn. App. 844, 850, 64 P.3d 60 (2003). The separation of powers doctrine prevents one branch of government from encroaching upon the “fundamental functions” of another branch. *Id.* at 850 (citing *Carrick v. Locke*, 125 Wn.2d 129, 135, 882 P.2d 173 (1994)).

In *State ex rel. Schillberg v. Cascade Dist. Court*, 94 Wn.2d 772, 775, 621 P.2d 115 (1980), the Court considered which governmental branch had the power to grant a deferred prosecution. The statute in question expressly gave the authority to defer prosecution to the trial court, not to the prosecutor. *Id.* at 776-77. The prosecution challenged this authority, contending this distribution of power under the statute infringed on the executive branch's authority decision to prosecute. *Id.* at 778. Rejecting the prosecutor's argument, the Court held that the prosecutor could not prevent a trial judge from deferring prosecution because, under the statute, it was simply a sentencing decision that fell within the power of the judicial branch. *Id.* at 779. The *Schillberg* Court recognized that the Legislature could have given the executive branch the power over deferred prosecutions, but to do so, the legislative delegation would have had to contain sufficient standards to prevent arbitrary executive action. *Id.* at 780-82; *State v. Lewis*, 115 Wn.2d 294, 306-07, 797 P.2d 1141 (1990).

Contrary to Bufalini's arguments, the reclassification of the DOSA sentence under RCW 9.94A.662(3) does not violate *Schillberg* or the separation of powers. The Department is not infringing on the superior court's authority to sentence Bufalini. Rather, Department is performing its executive authority to carry out the sentence already imposed by the court, as authorized by statute.

Here, there is no concern about infringement on judicial authority to sentence defendants because the court has already fully sentenced Bufalini. In the judgment and sentence, the court waived the standard range sentence and imposed a DOSA alternative sentence. Exhibit 1, at 8. In doing so, the court expressly included a provision that authorizes the Department to reclassify the sentence: “An offender who fails to complete the special drug offender sentencing alternative program or who is administratively terminated from the program shall be reclassified to serve the unexpired term of the sentence as ordered by the sentencing judge....” Exhibit 1, at 9 (section 4.7). This provision in the judgment is consistent with RCW 9.94A.662(3).

The Department is not interfering with the superior court’s power to impose a sentence. Rather, the Department is performing its executive branch authority, granted by statute, to carry out the sentence already imposed by the court. The DOSA statute expressly authorizes the Department to hold a hearing and to revoke the DOSA sentence for an offender’s violation of a condition of the sentence. The statute provides: “If the department finds that conditions of community custody have been willfully violated, the offender may be reclassified to serve the remaining balance of the original sentence.” RCW 9.94A.662(3). “[U]nder the current version of the statute, the legislature has granted DOC the power

to revoke a DOSA sentence and determine penalties for noncompliance.” *State v. Roy*, 126 Wn. App. 124, 128, 107 P.3d 750 (2005). As this Court has previously recognized, the Department has statutory authority to reclassify a DOSA sentence, and to return the offender to prison. *In re Price*, 157 Wn. App. 889, 907-909, 240 P.3d 188 (2010). This authority is consistent with numerous other opinions recognizing the Department’s authority to conduct hearings and to return offenders to prison under the judgment and sentence. *See, e.g., In re Blackburn*, 168 Wn.2d 881, 232 P.3d 1091, 1093 (2010); *In re McKay*, 127 Wn. App. 165, 170, 110 P.3d 856, 858 (2005); *Roy*, 126 Wn. App. at 128.

The executive action in reclassifying the DOSA alternative sentence is the equivalent of an order revoking parole from a maximum sentence of confinement. *See Price*, 157 Wn. App. at 900 (recognizing community custody on a DOSA sentence is equivalent to parole). The decision to revoke parole need not be made by a judicial officer. *Morrissey v. Brewer*, 408 U.S. 471, 489, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972). Although the revocation decision must be made by a “neutral and detached” officer, “[t]his independent officer need not be a judicial officer. The granting and revocation of parole are matters traditionally handled by administrative officers.” *Id.* at 486. Tasking the Department with reclassifying the sentence is consistent with historical practices of parole.

Finally, even if there were a concern that reclassification of the DOSA sentence might encroach on the power of the judicial branch, there is no separation of powers violation because the legislature has delegated this authority to the Department and has provided sufficient standards to avoid arbitrary executive action. *Schillberg*, 94 Wn.2d. at 780-82; *Lewis*, 115 Wn.2d at 306-07. There are two requirements for lawful delegation. *State v. Simmons*, 152 Wn.2d 450, 455, 98 P.3d 789 (2004). The Legislature must have described in general terms what is to be done and by which agency, and there must be adequate procedural safeguards to control arbitrary agency action and abuse of discretion. *Id.* at 455. Both of these criteria are present in RCW 9.94A.662(3).

First, the statute describes what is to be done and by which agency. The statute directs the Department to reclassify a DOSA sentence, and return the offender to serve the original standard range sentence, when the offender is administratively terminated from the DOSA treatment program. RCW 9.94A.662(3). Second, there are adequate procedural safeguards because Bufalini may file a civil action (such as this current action) for allegedly arbitrary agency action. *State v. Crown Zellerbach*, 92 Wn.2d 894, 901, 602 P.2d 1172 (1979); *Simmons*, 152 Wn.2d at 457; *Brown v. Vail*, 169 Wn.2d 318, 322, 237 P.3d 263 (2010). For this reason, there is no violation of the separation of powers.

IV. CONCLUSION

For the reasons stated above, Respondent respectfully requests that the Court deny the personal restraint petition.

DATED this 2nd day of October, 2017.

Respectfully submitted,

ROBERT W. FERGUSON
Attorney General

s/ John J. Samson

JOHN J. SAMSON, WSBA #22187

Assistant Attorney General

Attorney General's Office

Corrections Division OID #91025

P.O. Box 40116

Olympia, WA 98504-0116

(360) 586-1445

johns@atg.wa.gov

CERTIFICATE OF SERVICE

I certify that on the date below I caused to be electronically filed the RESPONSE TO PERSONAL RESTRAINT PETITION with the Clerk of the Court using the electronic filing system which will send notification of such filing to the following party:

James Lobsenz, Attorney for Petitioner lobsenz@carneylaw.com

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED this 2nd day of October, 2017, at Olympia, WA.

s/ Tera Linford
TERA LINFORD
Legal Assistant
Attorney General's Office
Corrections Division OID #91025
PO Box 40116
Olympia WA 98504-0116
360-586-1445
teral@atg.wa.gov

NO. 50785-4-II

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

In re the Personal Restraint Petition of:

PAUL BUFALINI,

Petitioner.

SECOND
DECLARATION OF
JOHN SAMSON

I, JOHN SAMSON, make the following declaration:

1. I am an Assistant Attorney General, assigned to represent the Respondent, the Department of Corrections, in the above captioned cause.

2. Attached to this declaration as Exhibit 1 is a true and correct copy of the Judgment and Sentence for Bufalini's felony convictions in the case of *State v. Bufalini*, Pierce County Cause No. 13-1-01924-0, as obtained from the Department of Corrections.

3. Attached to this declaration as Exhibit 2 is a true and correct copy of the Acknowledgement of Drug/Alcohol Testing form, as obtained from the Department.

4. Attached to this declaration as Exhibit 3 is a true and correct copy of an excerpt from the Resident Handbook (page 40 and the signature page), as obtained from the Department.

5. Attached to this declaration as Exhibit 4 is a true and correct copy of DOC Policy 420.380, as obtained from the Department.

6. Attached to this declaration as Exhibit 5 is a true and correct copy of the Incident Report, dated December 11, 2016, as obtained from the Department.

7. Attached to this declaration as Exhibit 6 is a true and correct copy of the Work Release Major Infraction Report, as obtained from the Department.

8. Attached to this declaration as Exhibit 7 is a true and correct copy of the Work Release Notice of Allegations, as obtained from the Department.

9. Attached to this declaration as Exhibit 8 is a true and correct copy of the Hearing and Decision Summary Report, dated December 20, 2016, as obtained from the Department.

10. Attached to this declaration as Exhibit 9 is a true and correct copy of the Appeals Panel Decision, dated January 9, 2017, as obtained from the Department.

11. Attached to this declaration as Exhibit 10 is a true and correct copy of the Notice of Allegations, dated December 28, 2016, as obtained from the Department.

12. Attached to this declaration as Exhibit 11 is a true and correct copy of the Hearing and Decision Summary Report, dated January 4, 2016, as obtained from the Department.

13. Attached to this declaration as Exhibit 12 is a true and correct copy of the Letter from Dominga Soliz, dated February 8, 2017, as obtained from the Department.

14. Attached to this declaration as Exhibit 13 is a true and correct copy of the Notice of Allegations, dated February 15, 2017, as obtained from the Department.

15. Attached to this declaration as Exhibit 14 is a true and correct copy of the Hearing and Decision Summary Report, dated February 22, 2017, as obtained from the Department.

16. Attached to this declaration as Exhibit 15 is a true and correct copy of the Appeals Panel Decision, dated April 4, 2017, as obtained from the Department.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED this 2nd day of October, 2017.

ROBERT W. FERGUSON
Attorney General

s/ John J. Samson
JOHN J. SAMSON, WSBA #22187
Assistant Attorney General
Attorney General's Office
Corrections Division, OID #91025
PO Box 40116
Olympia WA 98504-0116
360-586-1445
JohnS@atg.wa.gov

CERTIFICATE OF SERVICE

I certify that on the date below I caused to be electronically filed the SECOND DECLARATION OF JOHN SAMSON with the Clerk of the Court using the electronic filing system which will send notification of such filing to the following party:

James Lobsenz, Attorney for Petitioner lobsenz@carneylaw.com

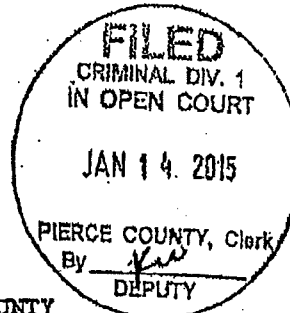
I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED this 2nd day of October, 2017, at Olympia, WA.

s/ Tera Linford
TERA LINFORD
Legal Assistant
Attorney General's Office
Corrections Division
PO Box 40116
Olympia WA 98504-0116
teral@atg.wa.gov

EXHIBIT 1

13-1-01924-0



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

306464
1/22/15

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 13-1-01924-0

JAN 15 2015

VS

PAUL SAMUEL BUFALINI

Defendant.

SID: 22417548

DOB: [REDACTED]

JUDGMENT AND SENTENCE (JS)

- ☒ Prison
☐ RCW 9.94A.712(9), 9A.507 Prison Confinement
☐ Jail One Year or Less
☐ First-Time Offender
☐ Special Sexual Offender Sentencing Alternative
☒ Special Drug Offender Sentencing Alternative
☐ Alternative to Confinement (ATC)
☒ Clerk's Action Required, para 4.5 (SDOSA),
4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 6.8
☐ Juvenile Decline ☒ Mandatory ☐ Discretionary

I. HEARING

- 1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS:

- 2.1 CURRENT OFFENSE(S): The defendant was found guilty on 1/14/15
by ☒ plea ☐ jury-verdict ☐ bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	IDENTITY THEFT IN THE SECOND DEGREE	9A.02.02(3)		4/28/13 AND 5/10/13	131180857/ 121560775
II	POSSESSING STOLEN PROPERTY IN THE SECOND DEGREE	9A.56.140(1) AND 9A.56.160(1)⓪		4/28/13 AND 5/10/13	131180857/ 121560775

JUDGMENT AND SENTENCE (JS)

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15-9-00449-3

Office of Prosecuting Attorney
930 Tacoma Avenue S. Room 946
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

EXHIBIT

IV	IDENTITY THEFT IN THE FIRST DEGREE	9A.020(1)(2)(a)		5/10/12 AND 5/31/12	131180857/ 121560775
V	FORGERY	9A.60.020(1)(a)(b)		5/10/12 AND 5/31/12	131180857/ 121560775
VI	UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE	69.50.4013 (1)		4/28/13 AND 5/10/13	131180857/ 121560775
VII	UNLAWFUL POSSESSION OF PAYMENT INSTRUMENTS	9A.56.020(2)(a)(i)		4/28/13 AND 5/10/13	131180857/ 121560775
VIII	BAIL JUMPING	9A.76.170(1)(c)(i)		8/1/13	131180857/ 121560775
IX	BAIL JUMPING	9A.76.170(1)(c)(i)		10/10/13	131180857/ 121560775
X	BAIL JUMPING	9A.76.170(1)(c)(i)		11/7/13	131180857/ 121560775

(F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Horn, See RCW 46.61.520, (IP) Juvenile present, (SM) Sexual Motivation, (SCF) Sexual Conduct with a Child for a Fee See RCW 9A.4A.533(b). (If the crime is a drug offense, include the type of drug in the second column.)

as charged in the AMENDED Information:

- [] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9A.4A.589):
- [] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9A.4A.525):

COUNT NO	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	UPCS METH 2X	5/14/07	PIERCE, WA	10/21/04	A	NV
2	UPCS METH	5/14/07	PIERCE, WA	4/1/05	A	NV
3	UPCS	5/26/09	KING, WA	6/1/08	A	NV
4	ATT UPCS	9/9/10	PIERCE, WA	1/15/09	A	NV
5	ID THEFT 2	CURRENT	PIERCE, WA	4/28/13	A	NV
6	PSP 2	CURRENT	PIERCE, WA	4/28/13	A	NV
7	VEH PROWL 2	CURRENT	PIERCE, WA	4/28/13	A	NV
8	ID THEFT 1	CURRENT	PIERCE, WA	5/10/12	A	NV
9	FORGERY	CURRENT	PIERCE, WA	5/10/12	A	NV
10	UPCS	CURRENT	PIERCE, WA	4/28/13	A	NV
11	UPPI	CURRENT	PIERCE, WA	4/28/13	A	NV
12	BAIL JUMPING	CURRENT	PIERCE, WA	8/1/13	A	NV
13	BAIL JUMPING	CURRENT	PIERCE, WA	10/10/13	A	NV
14	BAIL JUMPING	CURRENT	PIERCE, WA	11/7/13	A	NV

☐ The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9A.525):

23 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	9+	II	43-57 MOS	NONE	43-57 MOS	5 YRS
II	9+	I	22-29 MOS	NONE	22-29 MOS	5 YRS
IV	9+	IV	63-84 MOS	NONE	63-84 MOS	10 YRS
V	9+	I	22-29 MOS	NONE	22-29 MOS	5 YRS
VI	9+	DRUG GRID	12-24 MOS	NONE	12-24 MOS	5 YRS
VII	9+	I	22-29 MOS	NONE	22-29 MOS	5 YRS
VIII	9+	III	51-60 MOS	NONE	51-60 MOS	5 YRS
IX	9+	III	51-60 MOS	NONE	51-60 MOS	5 YRS
X	9+	III	51-60 MOS	NONE	51-60 MOS	5 YRS

24 ☐ EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence:

☐ within ☐ below the standard range for Count(s) _____

☐ above the standard range for Count(s) _____

JUDGMENT AND SENTENCE (JS)

(Felony) (7/2007) Page 5 of 6

☐ The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence further and is consistent with the interests of justice and the purposes of the sentencing reform act.

☐ Aggravating factors were ☐ stipulated by the defendant, ☐ found by the court after the defendant waived jury trial, ☐ found by jury by special interrogatory.

Findings of fact and conclusions of law are attached in Appendix 2.4. ☐ Jury's special interrogatory is attached. The Prosecuting Attorney ☐ did ☐ did not recommend a similar sentence.

2.5 **ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS.** The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9A.753.

☐ The following extraordinary circumstances exist that make restitution inappropriate (RCW 9A.753):

☐ The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate:

2.6 ☐ **FELONY FIREARM OFFENDER REGISTRATION** The defendant committed a felony firearm offense as defined in RCW 9A.1010.

☐ The court considered the following factors:

☐ the defendant's criminal history.

☐ whether the defendant has previously been found not guilty by reason of insanity of any offense in this state or elsewhere.

☐ evidence of the defendant's propensity for violence that would likely endanger persons.

☐ other: _____

☐ The court decided the defendant ☐ should ☐ should not register as a felony firearm offender.

III. JUDGMENT

3.1 The defendant is **GUILTY** of the Counts and Charges listed in Paragraph 2.1.

3.2 ☐ The court **DISMISSES** Counts _____ ☐ The defendant is found **NOT GUILTY** of Counts _____

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court: (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

JASS CODE

RTMR/N

\$

4596⁰⁰

Restitution to:

See Restitution order

\$

Restitution to:

(Name and Address--address may be withheld and provided confidentially to Clerk's Office).

PCV

\$

500.00

Crime Victim assessment

DNA

\$

100.00

DNA Database Fee

PUB

\$

Court-Appointed Attorney Fees and Defense Costs

PRC

\$

200.00

Criminal Filing Fee

JUDGMENT AND SENTENCE (JS)

(Felony) (1/2007) Page 4 of 15

FCM

\$ _____ Fine

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ _____ Other Costs for: _____

\$ _____ Other Costs for: _____

\$ 500.00 TOTAL

☐ The above total does not include all restitution which may be set by later order of the court. An agreed restitution order may be entered. RCW 9A.753. A restitution hearing:

☐ shall be set by the prosecutor.

☐ is scheduled for _____

JUDGMENT AND SENTENCE (S)

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Office of Prosecuting Attorney
930 Tacoma Avenue S. Room 946
Tacoma, Washington 98402-2171
Telephone: (253) 798-7306

13-1-01924-0

RESTITUTION. Order Attached

[X] Restitution ordered above shall be paid jointly and severally with:

NAME of other defendant	CAUSE NUMBER	(Victim name)	(Amount-\$)
RJN			

[] The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).

[X] All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein. Not less than \$ per week per month commencing. per week RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

The defendant shall report to the clerk of the court or as directed by the clerk of the court to provide financial and other information as requested. RCW 9.94A.760(7)(b)

[] **COSTS OF INCARCERATION** In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate. RCW 10.01.160.

COLLECTION COSTS The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute. RCW 36.18.190, 9.94A.780 and 19.16.500.

INTEREST The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090

COSTS ON APPEAL An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

4.1b **ELECTRONIC MONITORING-REIMBURSEMENT.** The defendant is ordered to reimburse _____ (name of electronic monitoring agency) at _____ for the cost of pretrial electronic monitoring in the amount of \$ _____.

4.2 [X] **DNA TESTING.** The defendant shall have a blood/biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

[] **HIV TESTING.** The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

4.3 **NO CONTACT**

The defendant shall not have contact with CYNTHIA MINETTE, DAVID BUFFALINI (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for 5 years (not to exceed the maximum statutory sentence).

[X] Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault Protection Order is filed with this Judgment and Sentence.

4.4 OTHER: Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law.

NO Contact w/ victims (Contact w/ David + Kristine Butlini is permitted)
NO LFOs including restriction of all charged, uncharged, dismissed counts
NO absconding behavior
NO use or possession of controlled substances
NO association w/ drug users or sellers unless in treatment
Drug treatment
Removal w/ PSA requirements
Other per PRO
Other per PRO

License suspension per PRO

4.4a All property is hereby forfeited

[] Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law.

4.4b BOND IS HEREBY EXONERATED

4.5 CONFINEMENT/SPECIAL DRUG OFFENDER SENTENCING ALTERNATIVE. RCW 9.94A.660. The court finds that the defendant is a drug offender who is eligible for the special sentencing alternative on count(s) 1-4 and the court has determined that the special drug offender sentencing alternative is appropriate. The court waives imposition of a sentence within the standard range on the indicated counts and imposes a sentence which is half of the midpoint of the standard range. The court imposes the following sentence:

(a) PRISON-BASED ALTERNATIVE (effective for sentences imposed on or after October 1, 2005)

(1) CONFINEMENT. On SDOSA sentences, defendant is sentenced to a term of total confinement in the custody of the Department of Corrections (DOC) that is half of the midpoint of the standard range, or 12 months, whichever is greater.

36 months on Count No. 1 ☒ SDOSA ☐ Standard Range
24 months on Count No. 2 ☒ SDOSA ☐ Standard Range
24 months on Count No. 3 ☒ SDOSA ☐ Standard Range
36 months on Count No. 4 ☒ SDOSA ☐ Standard Range
12 months on Count No. 5 ☒ SDOSA ☐ Standard Range
36 months on Count No. 6 ☒ SDOSA ☐ Standard Range

Confinement shall commence immediately unless otherwise set forth here

Work release is authorized, if eligible and approved. If the midpoint of the standard range is 24 months or less, no more than three months may be served in work release status. RCW 9.94A.731.

The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: to be determined by DOC

(2) COMMUNITY CUSTODY. Defendant shall serve 36.75 months in community custody (The remainder of the midpoint of the standard range.) The defendant shall comply with the community custody conditions in paragraph 4.6.

(b) RESIDENTIAL CHEMICAL DEPENDENCY TREATMENT-BASED ALTERNATIVE (effective for sentences imposed on or after October 1, 2005).

(1) Defendant shall serve _____ months in community custody (A term equal to one-half of the midpoint of the standard range or two years, whichever is greater) under the supervision of the Department of Corrections (DOC), on the condition that the defendant enters and remains in residential chemical dependency treatment certified under chapter 70.95A RCW for _____ months.

(2) The defendant shall comply with the community custody conditions in paragraph 4.6. DOC shall make chemical dependency assessment and treatment services available to the defendant during the term of community custody, within available funding.

(3) A progress hearing is set for _____ (date). A treatment termination hearing is scheduled for three months before the expiration of the term of community custody, on _____ (date), or to be set later.

4.6 COMMUNITY CUSTODY CONDITIONS. RCW 9.94A.660. Defendant shall serve the following months in community custody. (The remainder of the midpoint of the standard range on SDOSA sentences.)

JUDGMENT AND SENTENCE (JS)

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25 months on Count No. 1
12.75 months on Count No. 11.5
12.75 months on Count No. 11.5
12.75 months on Count No. 11.5
12.75 months on Count No. 11.5
24.75 months on Count No. 11.5
months on Count No. 11.5

Defendant shall report to DOC, 514 South 13th St, Tacoma not later than 72 hours after release from confinement and the defendant shall comply with the instructions, rules and regulations of DOC for the conduct of the defendant during the period of community custody, shall perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC, shall obey all laws, shall not use illegal controlled substances and shall comply with any other conditions of community custody stated in this Judgment and Sentence or other conditions that may be imposed by the court or DOC during community custody.

- (a) Undergo and successfully complete a substance abuse treatment program approved by the division of alcohol and substance abuse of the Department of Social and Health Services.
- (b) Undergo urinalysis or other testing to monitor drug-free status. [] The defendant shall pay the statutory rate to DOC, while on community custody, to offset the cost of urinalysis.
- (c) Additional conditions (choose at least three):
- ☒ pay all court-ordered legal financial obligations
 - ☒ report as directed to a community corrections officer
 - ☒ notify the court or community corrections officer in advance of any change in defendant's address or employment
 - ☒ remain within or outside of prescribed geographical boundaries
 - ☒ perform community service work
 - ☐ devote time to specific employment or training
 - ☐ stay out of areas designated by the judge
 - ☒ conditions set forth in Appendix F

Other conditions:

Out program 4.4
per CEO

4.7

(a) ADDITIONAL CONFINEMENT UPON VIOLATION OF SDOSA SENTENCE CONDITIONS. If the defendant violates any of the sentence conditions in Section 4.6 above, or, for offenses committed on or after June 8, 2000, is found by the United States attorney general to be subject to a deportation order, a violation hearing shall be held by the department, unless waived by the offender. If the department finds that the conditions have been willfully violated, the offender may be reclassified to serve the remaining balance of the original sentence. For offenses committed on or after June 8, 2000, if the department finds that the offender is subject to a valid deportation order, the department may administratively terminate the offender from the program and reclassify the offender to serve the remaining balance of the original sentence. An offender who fails to complete the special drug offender sentencing alternative program or who is administratively terminated from the program shall be reclassified to serve the unexpired term of the sentence as ordered by the sentencing judge and shall be subject to all rules relating to community custody and earned release time. An offender who violates any conditions of community custody as defined by the department shall be sanctioned. Sanctions may include, but are not limited to, reclassifying the offender to serve the unexpired term of sentence as ordered by the sentencing judge. If an offender is reclassified to

serve the unexpired term of the sentence, the offender shall be subject to all rules relating to earned release time. RCW 9A.660.

(b) CONFINEMENT ORDERED AT THE TREATMENT TERMINATION HEARING (effective for sentences imposed on or after October 1, 2005). At the treatment termination hearing, the court may impose a term of total confinement equal to one-half of the midpoint of the standard sentence range. Confinement imposed at the hearing shall be followed by the term of community custody in paragraph 4.8 within available funding. DOC shall make chemical dependency assessment and treatment services available to the defendant during the terms of total confinement and community custody.

4.8 ADDITIONAL TERM OF COMMUNITY CUSTODY UPON FAILURE TO COMPLETE OR TERMINATION FROM ALTERNATIVE PROGRAM. For offenses committed on or after June 8, 2000, the following term of community custody is ordered and shall be imposed upon the defendant's failure to complete or defendant's administrative termination from the special drug offender sentencing alternative program. Defendant shall serve a range from

<u>12</u>	to	_____	months on Count No.	<u>1</u>
<u>12</u>	to	_____	months on Count No.	<u>1</u>
<u>12</u>	to	_____	months on Count No.	<u>1</u>
_____	to	_____	months on Count No.	_____
_____	to	_____	months on Count No.	_____
_____	to	_____	months on Count No.	_____
_____	to	_____	months on Count No.	_____
_____	to	_____	months on Count No.	_____
_____	to	_____	months on Count No.	_____

in community custody or up to the period of earned release, whichever is longer.

PROVIDED: That under no circumstances shall the combined term of confinement and term of community custody actually served exceed the statutory maximum for each offense.

While on community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) not consume controlled substances except pursuant to lawfully issued prescriptions; (4) not unlawfully possess controlled substances while in community custody; (5) pay supervision fees as determined by DOC; and (6) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community custody.

☐ The defendant shall not consume any alcohol.

☒ Defendant shall have no contact with:

☒ Defendant shall remain ☒ within ☒ outside of a specified geographical boundary, to-wit:

PLS LEO

☐ The defendant shall participate in the following crime-related treatment or counseling services:

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1/18/2015

64. The defendant shall undergo an evaluation for treatment for ☐ domestic violence ☒ substance abuse
☐ mental health ☐ anger management and fully comply with all recommended treatment.

64. The defendant shall comply with the following crime-related prohibitions:

PLS PLO

Other conditions may be imposed by the court or DOC during community custody, or are set forth here:

PLS PLO

PLS paragraph 4.4

V. NOTICES AND SIGNATURES

- 5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.
- 5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505. The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).
- 5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4 I, you are notified that the Department of Corrections or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.760. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.760 may be taken without further notice. RCW 9.94A.760.
- 5.4 **RESTITUTION HEARING.**
☒ Defendant waives any right to be present at any restitution hearing (sign initials): RS
- 5.5 **CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per Section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.
- 5.6 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047
- 5.7 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200.
N/A
- 5.8 **MA** The court finds that Count VI is a felony in the commission of which a motor vehicle was used. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.
- 5.9 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.

13-1-01924-0

5.10 OTHER: _____

DONE in Open Court and in the presence of the defendant this date:

FRANK E. CUTHBERTSON
JUDGE

Print name: Cuthbertson

Deputy Prosecuting Attorney

Print name: William

WSB # 30067

Attorney for Defendant

Print name: Brett A. Portzer

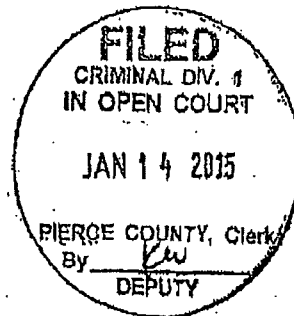
WSB # 17283

Defendant

Print name: Paul B. B. B.

VOTING RIGHTS STATEMENT: RCW 10.64.140. I acknowledge that my right to vote has been lost due to felony convictions. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660.

Defendant's signature: Paul B. B. B.



CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 13-1-01924-0

I, KEVIN STOCK Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date: _____

Clerk of said County and State, by: _____, Deputy Clerk

IDENTIFICATION OF COURT REPORTER

ANN MARIE ALLISON

Court Reporter

JUDGMENT AND SENTENCE (JS)
(Felony) (7/2007) Page 14 of 15

Office of Prosecuting Attorney
930 Tacoma Avenue S, Room 946
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

APPENDIX "F"

The defendant having been sentenced to the Department of Corrections for a:

- ☐ sex offense
- ☐ serious violent offense
- ☐ assault in the second degree
- ☐ any crime where the defendant or an accomplice was armed with a deadly weapon
- ☒ any felony under 69.50 and 69.52

The offender shall report to and be available for contact with the assigned community corrections officer as directed;

The offender shall work at Department of Corrections approved education, employment, and/or community service;

The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions;

An offender in community custody shall not unlawfully possess controlled substances;

The offender shall pay community placement fees as determined by DOC;

The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

The offender shall submit to affirmative acts necessary to monitor compliance with court orders as required by DOC.

The Court may also order any of the following special conditions:

- ☒ (i) The offender shall remain within, or outside of, a specified geographical boundary: Pierce CO
- ☒ (ii) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals: Pierce CO
- ☒ (iii) The offender shall participate in crime-related treatment or counseling services;
- ☐ (iv) The offender shall not consume alcohol;
- ☐ (v) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections; or
- ☒ (vi) The offender shall comply with any crime-related prohibitions
- ☒ (vii) Other: Pierce CO

APPENDIX F

13 Jan 1924 0
B
FILED
CRIMINAL DIV. 1
IN OPEN COURT
JAN 14 2015
PIERCE COUNTY, Clark
By W
DEPUTY

Date of Birth ~~REDACTED~~

Local ID No 20042432020

Other:

Race:			Ethnicity:			Sex:	
<input type="checkbox"/>	Asian/Pacific Islander	<input type="checkbox"/>	Black/African- American	<input checked="" type="checkbox"/>	Caucasian	<input type="checkbox"/>	Hispanic
<input type="checkbox"/>	Native American	<input type="checkbox"/>	Other: :	<input checked="" type="checkbox"/>	Non- Hispanic	<input type="checkbox"/>	Female

Left four fingers taken simultaneously

Left Thumb

Fight Thrush

Right four fingers taken simultaneously

I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk, Debra Wayne Dated: 11/1/01

DEFENDANT'S SIGNATURE:

DEFENDANT'S ADDRESS:

JUDGMENT AND SENTENCE (JS)
(Felony) (7/2007) Page 15 of 15

Office of Prosecuting Attorney
930 Tacoma Avenue S. Room 946
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

EXHIBIT 2



ACKNOWLEDGMENT OF DRUG/ALCOHOL TESTING -
PRISON/WORK RELEASE
RECONOCIMIENTO DE PRUEBAS DE DROGAS/ALCOHOL -
PRISION/RECLUSORIO NOCTURNO

Facility Name
Instalación:

PROGRESS HOUSE WORK RELEASE

Date
Fecha: 8/11/2016

To
Para:

BUFALINI, Paul
Offender/Interno

306464
DOC #/No. DOC

Unit
Unidad:

Cell
Celda:

From
De:

ay Ballentinos
Employee/Contract Staff - Empleado/Personal de contrato

Per DOC 420.380 Drug/Alcohol Testing, you are subject to drug/alcohol testing, which will be conducted by a qualified employee/contract staff. You have a right to refuse. However, if you refuse or fail to provide a test sample, or if you provide a sample that tests positive for an unauthorized substance, you will be subject to a violation, and your custody level and any pending transfers may be impacted.

De acuerdo con DOC 420.380 Pruebas de drogas/alcohol, usted tiene que someterse a las pruebas de drogas/alcohol provistas por un empleado/miembro del personal contratado capacitado. Usted tiene el derecho de rehúsar participar. Sin embargo, si usted rehúsa participar o falla al no proveer una muestra o provee una muestra que da resultados positivos por alguna sustancia no autorizada, usted estará sujeto a una violación de regla, lo cual puede impactar su nivel de custodia y traslado pendiente, si es que hay.

FROM THE OFFENDER: By signing below, I acknowledge that I am required to produce a test sample. Further, I understand that if I refuse or fail to provide a test sample, or if I provide a sample that tests positive for an unauthorized substance, I will be subject to a violation, and my custody level and any pending transfers may be impacted.

DEL INTERNO: Con mi firma al calce, yo reconozco que se me requiere proveer una muestra. Además, comprendo que si rehúso o fallo al no proveer una muestra, o si proveo una muestra que da resultados positivos por alguna sustancia no autorizada, estaré sujeto a una violación de regla lo cual puede impactar mi nivel de custodia y traslado pendiente, si es que hay.

Paul Bufalini
Offender Signature/Firma del interno

ay Ballentinos
Employee/Contract Staff Signature/Firma del
empleado/personal de contrato

8/11/16
Date/Fecha

The contents of this document may be eligible for public disclosure. Social Security Numbers are considered confidential information and will be redacted in the event of such a request. This form is governed by Executive Order 00-03, RCW 42.56, and RCW 40.14.

Distribution: ORIGINAL - Imaging System COPY - Offender

EXHIBIT 3

Substance Abuse and Testing

In accordance with DOC 420.380 Drug/Alcohol Testing, you are required to submit to substance abuse testing on a scheduled/unscheduled basis. If you refuse or fail to comply with testing, you will be infracted.

You will have up to one hour to produce a sample.

Do not consume mouthwash or other products containing alcohol, poppy seeds, non-alcoholic beer or wine, or herbal energy formulas. Use of these products may produce a positive substance abuse test.

ALCOHOL AND/OR DRUG POSSESSION AND/OR USE:

- * ■ No use or possession of alcohol, marijuana or illegal drugs is permitted
- All medications, including non-prescription items, are to be turned in to Control. They will be dispensed and logged in accordance with the prescription schedule or as needed if non-prescription (such as aspirin, cough medicine, vitamins, mouthwash, etc.). Residents may be allowed by their CCO to keep their medications on their person.
- Breathalyzer tests will be performed at random, whenever staff suspects consumption of alcohol, or routinely when residents return late from out-of-facility activities.
- * ■ Urine samples will be taken at random or whenever staff suspects consumption/use of drugs. Stalls (delays of over one hour in providing a requested urine sample) are considered to be an infraction regardless of whether or not the sample shows drug use.
- Tampering or attempting to tamper with a urine specimen is a major infraction, regardless of whether or not the specimen tests show positive results. This includes but is not limited to diluted samples.

RESIDENTS ARE ALLOWED ONE (1) HOUR TO PROVIDE AN UA SAMPLE. YOU ARE NOT ALLOWED TO HAVE MORE THAN EIGHT (8) OUNCES OF LIQUID PRIOR TO PROVIDING THIS SAMPLE. IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT YOUR CCO. THANK YOU.

HANDBOOK RECEIPT

I have read or have had read to me, and fully understand this handbook
and agree to abide by all rules in the handbook.

Paul Bufalini

BUFALINI, Paul DOC # 306464

8-11-16

Date

at Balentine

Witness

8/10/16

Date



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

APPLICABILITY

**PRISON/WORK RELEASE/FIELD
OFFENDER/SPANISH MANUALS**

REVISION DATE

6/1/14

PAGE NUMBER

1 of 12

NUMBER

DOC 420.380

POLICY

TITLE

DRUG/ALCOHOL TESTING

REVIEW/REVISION HISTORY:

Effective: 8/31/98
Revised: 8/20/99
Revised: 5/27/03
Revised: 1/21/05
Revised: 3/26/07 AB 07-008
Revised: 12/5/07
Revised: 12/18/07 AB 07-039
Revised: 10/4/10
Revised: 9/24/12
Revised: 6/1/14

SUMMARY OF REVISION/REVIEW:

Numerous changes, including adjustments to the substances for which testing is conducted.
Read carefully!

APPROVED:

Signature on file


BERNARD WARNER, Secretary
Department of Corrections

5/20/14

Date Signed

EXHIBIT

4

 STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS	APPLICABILITY PRISON/WORK RELEASE/FIELD OFFENDER/SPANISH MANUALS		
	REVISION DATE 6/1/14	PAGE NUMBER 2 of 12	NUMBER DOC 420.380
	TITLE DRUG/ALCOHOL TESTING		

POLICY

REFERENCES:

DOC 100.100 is hereby incorporated into this policy; WAC 137-28; WAC 137-56; ACA 5A-09; DOC 320.150 Disciplinary Sanctions; DOC 420.310 Searches of Offenders; DOC 420.365 Evidence Management for Work Release; DOC 420.375 Contraband and Evidence Handling; DOC 420.390 Arrest and Search; DOC 420.395 Evidence/Property Procedures for Field; DOC 460.000 Disciplinary Process for Prisons; DOC 460.130 Violations, Hearings, and Appeals; DOC 460.135 Disciplinary Procedures for Work Release; DOC 590.100 Extended Family Visiting; DOC 620.380 Offender Medical Cannabis Use; DOC 670.500 Chemical Dependency Treatment Services; DOC 670.655 Special Drug Offender Sentencing Alternative; Records Retention Schedule

POLICY:

- I. The Department will use drug testing as a management tool to enhance supervision, function as a treatment tool, and deter against drug use.

DIRECTIVE:

- I. Responsibilities
 - A. Employees/contract staff will only use drug testing options that are approved by the Department per the guidelines in Attachment 1.
 - B. Each Superintendent/Field Administrator will ensure drug and alcohol testing meets the expectations of this policy. S/he will appoint a Drug Testing Coordinator to coordinate, monitor, and provide the services of the drug testing program.
 - C. The Headquarters Prisons and Community Corrections designees will coordinate training for Drug Testing Coordinators and implement and follow a quality assurance program.
 - D. Drug Testing Coordinators will train employees and contract staff involved in any portion of the drug and alcohol testing process. Training will cover the use of all approved drug/alcohol screening instruments.
- II. Testing in Prison
 - A. Employees will conduct drug/alcohol testing using the instant on-site test. Off-site lab screening and/or confirmation may be ordered with justification and approval from the Superintendent/designee. Offenders must sign DOC 14-002 Acknowledgment of Drug/Alcohol Testing - Prison/Work Release when transferring to another facility.



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

APPLICABILITY

**PRISON/WORK RELEASE/FIELD
OFFENDER/SPANISH MANUALS**

REVISION DATE

6/1/14

PAGE NUMBER

3 of 12

NUMBER


DOC 420.380

POLICY

TITLE

DRUG/ALCOHOL TESTING

- B. Scheduled testing will be conducted before offenders are transferred to a minimum facility or Work Release.
1. Upon receipt of a transfer manifest, the Correctional Records Supervisor will notify the Drug Testing Coordinator/designee to schedule a urinalysis (UA). The Drug Testing Coordinator/designee will use an instant on-site test or other drug screen no more than 48 hours and no less than 24 hours before the date of transfer.
 2. If the test result is positive, the Drug Testing Coordinator/designee will notify the appropriate employees, and the transfer will be delayed/ cancelled pending the outcome of the disciplinary hearing.
- C. Per DOC 590.100 Extended Family Visiting, drug/alcohol testing will be conducted no more than 24 hours before and after Extended Family Visits (EFVs) and may be conducted during the visits. If a test result is positive, appropriate employees will be notified. The result may be confirmed by the contracted lab if determined necessary or appropriate.
1. Before the EFV, the offender will submit to an instant on-site test. If the test result is positive or shows as diluted, the visit will be suspended pending a disciplinary hearing.
 2. During the EFV, the offender may be required to submit to random instant on-site tests. If the test result is positive or shows as diluted, the visit will be terminated.
 3. Upon conclusion of the EFV, a drug/alcohol test will be conducted at the time of the routine strip search.
- D. Employees may conduct a breath alcohol test when they have reason to believe that an offender has used, possessed, or possesses substances containing alcohol.
- E. Offenders participating in substance abuse treatment will be subject to drug/ alcohol testing:
1. Upon admission to treatment, and
 2. Randomly, or for cause, at the treatment provider/Counselor's discretion.
- F. A minimum of 2 percent of the average daily population at each Prison will be randomly tested for drugs and alcohol using either the instant on-site test or off-site screening and confirmation through the contracted lab. By the 5th of each

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month, the facility Drug Testing Coordinator will generate the list of offenders from Offender Management Network Information (OMNI).

G. An offender may also be tested:

1. When s/he returns from an absence (e.g., court appearance, outside work crew, outside medical appointment).
2. If s/he has a documented history of drug/alcohol related disciplinary reports or violation behavior.

III. Testing in Work Release

- A. Employees/contract staff will conduct drug/alcohol testing using the instant on-site test unless the Work Release contract indicates other methods of testing.
- B. Offenders entering Work Release directly from the community will be tested within 24 hours of admission. Offenders must sign DOC 14-002 Acknowledgment of Drug/Alcohol Testing - Prison/Work Release at the time of intake.
- C. Offenders will be tested according to their Custody Facility Plan.
- D. Employees/contract staff may conduct a breath alcohol test when they have reason to believe that an offender has used, possessed, or possesses substances containing alcohol.
- E. Offenders participating in substance abuse treatment will be subject to drug/alcohol testing:
 1. Upon admission to treatment, and
 2. Randomly, or for cause, at the treatment provider/Community Correction Officer (CCO)'s discretion.
- F. An offender may also be tested:
 1. When s/he returns from an absence from the facility (e.g., employment, court appearance, outside work crew, outside medical appointment).
 2. If s/he has a documented history of drug/alcohol related disciplinary reports or violation behavior.



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IV. Testing in the Community

- A. Employees will conduct drug/alcohol testing using the instant on-site test. Lab confirmation is not required, but may be approved by the Community Corrections Supervisor (CCS) in limited cases to monitor decreasing substance levels, confirm prescribed usage, or determine if an offender is masking prohibited use.
- B. Offenders that have a prohibition not to use drugs/alcohol or a condition to submit to drug testing/breathalyzer, or who have affirmative conduct in this area, will be tested. Offenders must sign DOC 14-035 Acknowledgment for Drug/Alcohol Testing - Field at the time the condition is imposed.
 1. Employees will conduct drug/alcohol testing for offenders per court or Department imposed conditions, prohibitions, affirmative conduct, or the Offender Supervision Plan.
 - a. The first test will be conducted within 30 days of intake, except for offenders serving original jail time, in which case the test will be conducted within 30 days of release.
 - b. High Risk Violent and High Risk Non-Violent offenders will be tested at least monthly, which may be reduced to quarterly after 3 consecutive negative tests.
 - 1) Violation behavior will result in a return to monthly testing.
 - c. Moderate and Low Risk offenders with reporting requirements will be tested at least quarterly.
- C. Drug Offender Sentencing Alternative (DOSA) offenders in community based residential treatment will be tested at the treatment provider's discretion.
 1. Employees will conduct testing on all DOSA offenders on release from Prison or residential treatment or when community supervision begins.
 2. Employees will conduct testing on DOSA offenders who fail to report for a scheduled treatment appointment.
 3. All DOSA offenders will be required to submit to weekly drug testing for the first 3 months following release from Prison or residential treatment. If test results are negative, testing will be conducted as required for offenders with face-to-face contacts per the contact standards, or per court imposed conditions, prohibitions, affirmative conduct, or the Offender Supervision Plan.

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V. Testing for Cause

- A. In Prisons and Work Releases, the Superintendent/facility CCS will identify employees/contract staff authorized to require tests for cause reasons.
- B. In the community, CCOs may test offenders for cause.
- C. Cause for testing will include, but will not be limited to:
 1. Direct observation by an employee/contract staff or reliable source that provides reasonable suspicion that an offender has used, possessed, or possesses a drug or alcohol.
 2. When a canine officer observes a behavior change in his/her dog that signifies suspicion of the presence of a drug. All offenders in the suspected area will be tested.
 3. The offender is involved in an on-the-job accident, unsafe practices, or violent behavior.

VI. Substances

- A. The on-site drug test for both the specimen cup and the oral swab will test for the following substances:
 1. Methamphetamine,
 2. Amphetamine,
 3. Cocaine Metabolite,
 4. Opiate (MOP),
 5. Benzodiazepine, and
 6. Oxycodone
- B. On-site drug test strips for urine may be used with the specimen cup to test for these additional substances:
 1. Phencyclidine (PCP),
 2. Buprenorphine (Suboxone),
 3. Tetrahydrocannabinol (THC),
 4. Adulterants/dilutions, and
 5. Spice (Synthetic Canibinoid).
- C. Tests for the following substances may be conducted/ordered with justification and authorization from the Superintendent/CCS or designee:
 1. Barbiturate,



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2. Methadone,
3. Propoxyphene,
4. Ecstasy, and
5. Bath salts.

D. Use of the breathalyzer is the preferred option when testing for alcohol.

1. Laboratory testing for alcohol use may be conducted/ordered with justification and approval from the Superintendent/CCS or designee when alcohol is a documented risk factor for the offender and is directly related to his/her offense cycle.

VII. Specimen Collection

A. An offender's refusal to submit to breath alcohol screening or urine/oral fluid specimen collection for a drug/alcohol test will be treated as a violation. [5A-09]

B. Employees/contract staff will ensure that all testing and results are logged in the offender's electronic file.

1. Prison employees may use DOC 14-037 Instant On-Site Drug Testing and Breathalyzer Data Collection Worksheet to collect data for input into the offender's electronic file.
2. Community Corrections employees/contract staff may use DOC 14-166 Instant On-site Drug and Alcohol Testing Collection to collect data for input into the offender's electronic file.

C. Urine Collection

1. Employees/contract staff trained in the specimen collecting process will collect the specimen. The tester will be the same gender as the offender. Offenders who are not directly involved in the collection will not be permitted in the collection area.

a. Offenders receiving kidney dialysis will not be required to provide urine specimens and may be tested using an oral fluid test.

- 1) In facilities with on-site health care, the tester will consult the facility Health Services Manager for alternative testing.
- 2) For all other offenders, the CCS/CCO will consult with the Chief Medical Officer at Headquarters regarding alternative testing.



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b. In Prisons, offenders with a valid Health Status Report (HSR) documenting a medical condition that causes difficulty urinating (e.g., parauresis/shy bladder) will be provided an additional hour to provide a urine specimen. If a specimen is not provided by the end of the second hour, an oral fluid test may be conducted with approval from the Superintendent/designee.

1) It is the offender's responsibility to obtain the HSR before the testing. Claiming a medical condition at the time of collection will not be sufficient reason for failing to produce a specimen.

c. If there is no same gender employee/contract staff available to collect the specimen, the offender will be tested using an oral fluid test.

2. The tester may use adulterant strips with the instant on-site tests on a random basis or when there is suspicion that a specimen is adulterated or diluted.

3. The tester will follow the procedures for specimen collection outlined in Processing Specimens for Contracted Lab - Chain of Custody Assurance (Attachment 2) and Testing Procedures - Urine (Attachment 5).

D. Oral Fluid Collection


1. Employees/contract staff trained in the oral fluid collection process may collect the specimen with justification and approval from the Superintendent/CCS or designee.

2. The tester will follow the procedures for specimen collection outlined in Processing Specimens for Contracted Lab - Chain of Custody Assurance (Attachment 2) and Testing Procedures - Oral Fluid (Attachment 4).

E. Breath Alcohol Screening

1. Employees/contract staff will use only Department authorized breathalyzer instruments.


2. Offenders who are not directly involved in the test will not be permitted in the testing area.

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3. Testing procedures are identified in Attachment 3. Testing procedures and accuracy check will be consistent with manufacturer's recommendations.
4. The Drug Testing Coordinator/CCS or designee will maintain the testing equipment records.
 - a. An accuracy check will be conducted monthly per manufacturer's instructions.
 - b. A calibration will be conducted by certified, trained personnel as needed when the instrument does not register accurately.
 - 1) The personnel will be responsible for the accuracy readings of the instruments they calibrate and may be called to a court or Department hearing to declare they have had the required training.
 - c. The Prisons and Community Corrections Divisions will maintain a current list of certified personnel authorized to conduct instrument calibration.
 - d. All accuracy checks and calibrations will be documented on DOC 14-311 Accuracy/Calibration Check Record. This record will be kept with the instrument and accessible for auditing purposes.
5. Offenders who provide a positive test reading of .020 or higher will be referred appropriately per the Response to Positive/Abnormal Test Results section of this policy.

VIII. Test Results

- A. The test results will be evaluated to determine if the reading falls within the normal range.
 1. An abnormal reading on pH, glutaraldehyde, nitrite, or oxidants suggests a chemical adulterant was introduced before or after urination.
 2. Specific gravity below 1.003 and a creatinine level of 20 mg/dl indicates the specimen was diluted.
- B. If the test result is negative and falls within the normal range, the tester will inform the offender of the result and document the result in the offender's electronic file. [5A-09]

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C. If the test result is positive or abnormal:

1. In Prisons and Work Releases, the tester will have a witness confirm the test result. The tester will document the result and the name of the witness in the offender's electronic file. [5A-09]
2. The tester will provide the offender an opportunity to admit use. If the offender admits use:
 - a. In Prison, the tester will document the admission in the violation report and the offender's electronic file.
 - b. In the community, s/he will be presented with DOC 14-021 Drug Use Admission for signature. If the offender signs the form, the tester will document the admission in the offender's electronic file, and no further testing will be required.
3. If the offender denies use, a new specimen will only be allowed with Superintendent/designee or CCS approval.

D. In Prisons, the results must be documented before transfer or release.


E. All specimens sent to the contracted lab will be confirmed through Gas Chromatography Mass Spectrometry (GC/MS) or Liquid Chromatography Mass Spectrometry (LCMS).

1. The offender will be subject to a violation if the lab results indicate the specimen was:
 - a. Adulterated, or
 - b. Diluted, unless the offender has a valid HSR documenting a medical condition that causes diluted urine.
2. At the request of the Department, individual specimens will be kept until final disposition of any court/Department action.

F. A copy of a confirmed positive test result will be forwarded to the central/offender file and to the assigned substance abuse professional, if applicable.

IX. [5A-09] Specimen Storage and Transfer


- A. For specimens being sent to the contracted lab, Department responsibility for the chain of custody is only complete when the test result has been documented in the offender's electronic file and the specimen has been processed per:

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1. Testing Procedures - Urine (Attachment 5) or Testing Procedures - Oral Fluid (Attachment 4), as applicable, and
 2. Processing Specimens for Contracted Lab - Chain of Custody Assurance (Attachment 2).
- B. Specimens not transported within 24 hours of collection must be stored in a secured receptacle.
- C. Handling and transportation of specimens should be documented on DOC 14-038 Drug Test Log Chain of Custody Assurance. The number of individuals handling the specimens must be kept to a minimum.
- D. Log sheets, any receipts from couriers, and other drug/alcohol testing records must be secured and retained per the Records Retention Schedule.
- X. Response to Positive/Abnormal Test Results
- A. In Prisons, upon receipt of a positive screening, the Drug Testing Coordinator will ask Health Services to complete DOC 14-036 Medication Certification Request to determine any possible cross-reactions between any prescribed medications the offender may be taking. In Work Releases and in the community, when confirmation is requested, employees/contract staff will submit verification of any prescribed medication with the test specimen.
- B. [5A-09] For offenders in Prison or Work Release, positive tests and abnormal results indicating adulterated/diluted specimens will be addressed per DOC 320.150 Disciplinary Sanctions or DOC 460.135 Disciplinary Procedures for Work Release, as applicable.
- C. An offender on community supervision who tests positive for a prohibited substance may be arrested and placed in total confinement, except if s/he tests positive for THC and has approval to use medical cannabis per DOC 620.380 Offender Medical Cannabis Use. The violation will be addressed per DOC 460.130 Violations, Hearings, and Appeals.
1. [5A-09] Positive drug/alcohol tests for DOSA offenders addressed per DOC 670.655 Special Drug Offender Sentencing Alternative.

DEFINITIONS:

Words/terms appearing in this policy may be defined in the glossary section of the Policy Manual.

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ATTACHMENTS:

Drug Testing Methods and Occasions of Use (Attachment 1)
Processing Specimens for Contracted Lab - Chain of Custody Assurance (Attachment 2)
Testing Procedures - Breath Alcohol Screening (Attachment 3)
Testing Procedures - Oral Fluid (Attachment 4)
Testing Procedures - Urine (Attachment 5)

DOC FORMS:

DOC 14-002 Acknowledgment of Drug/Alcohol Testing - Prison/Work Release
DOC 14-021 Drug Use Admission
DOC 14-035 Acknowledgment of Drug/Alcohol Testing - Field
DOC 14-036 Medication Certification Request
DOC 14-037 Instant On-Site Drug Testing and Breathalyzer Data Collection Worksheet
DOC 14-038 Drug Test Log Chain of Custody Assurance
DOC 14-166 Instant On-Site Drug and Alcohol Testing Collection
DOC 14-174 Acknowledgment of Drug/Alcohol Testing Time Requirements
DOC 14-311 Accuracy/Calibration Check Record

DRUG TESTING METHODS AND OCCASIONS OF USE

Systems	When to Use	Confirmation
Urinalysis - On-Site <i>Through Regional Business Office</i>	<ul style="list-style-type: none"> As outlined in policy 	<ul style="list-style-type: none"> Send urine specimen to contracted lab for confirmation when determined appropriate or necessary and approved by Superintendent/designee or Community Corrections Supervisor (CCS)
Urinalysis - Off-Site <i>Through contracted lab for screening or confirmation</i>	<ul style="list-style-type: none"> When determined appropriate or necessary for additional substances or confirmation, as outlined in policy 	<ul style="list-style-type: none"> Send urine specimen to contracted lab for screening/confirmation when determined appropriate or necessary and approved by Superintendent/designee or CCS
Oral Fluids <i>Through Regional Business Office</i>	<ul style="list-style-type: none"> When there is no same gender officer available Documented major medical issues that may preclude urination Imminent threat to public safety Record of suspicious flushing or adulteration of urine At the collector's discretion when the offender is unable to provide a urine sample within the allotted time 	<ul style="list-style-type: none"> Send oral fluid kit on positive tests to contracted lab for confirmation to lab when determined appropriate or necessary and approved by Superintendent/designee or CCS

**PROCESSING SPECIMENS FOR CONTRACTED LAB
CHAIN OF CUSTODY ASSURANCE**

1. Write the offender's name and DOC number on the adhesive label and the form.
2. In the offender's presence, ensure that the container lid is closed and secure. For urine tests, apply the adhesive label to the specimen cup.
3. Have the offender initial the tamper evident tape and place the tape over the container lid in the offender's presence.
4. To send specimens to the lab:
 - a. Ensure the specimen is placed in the sealable plastic bag along with the moisture-absorbent packet.
 - b. Place the original requisition form in the outer pouch and seal the bag.
 - c. Ensure the bag remains in your direct line of sight until secured in the designated location.
 - d. Place all bagged specimens in the mailer provided and send to the contracted lab through the U.S. Postal Service.
5. Complete DOC 14-038 Drug Test Log Chain of Custody Assurance with the offender names and DOC numbers for all specimens being sent to the contracted laboratory.
6. Retain DOC 14-038 Drug Test Log Chain of Custody Assurance.
 - a. In Prison, attach all receipts left by couriers to the respective DOC 14-038 Drug Test Log Chain of Custody Assurance.

TESTING PROCEDURES BREATH ALCOHOL SCREENING

ALCO-SENSOR III

1. Verify that the offender has not consumed alcohol within 15 minutes before testing and has not smoked within 3 minutes before testing.
2. Check the temperature display – should be 20-36 degrees Celsius.
3. Press the SET button.
4. Press and hold the READ button.
5. Confirm the display goes down to 0.000 in approximately 10-15 seconds. If it does not, repeat steps 4 and 5.
6. Attach the plastic mouthpiece to the top of the instrument. The offender will blow into the long end.
7. Press the SET button.
8. Have the offender blow through the mouthpiece for 10-15 seconds. This needs to be a deep lung breath. Be sure to point the instrument away from you.
9. Press the READ button for the last 4-5 seconds while the offender is blowing.
10. Keep the READ button pressed until a "peak" reading is obtained. This can take up to 45 seconds.
11. Remove and discard the mouthpiece.
12. Store the instrument with the SET button depressed.

ALCO-SENSOR IV

1. Insert the mouthpiece. This will turn the unit on.
2. Once the mouthpiece has been properly inserted, the unit's temperature should read between 10-40 degrees Celsius. If the unit's temperature is not within this range, remove the mouthpiece and take steps to bring the temperature within the operating range.
3. The unit will prompt to press the SET button. Follow any prompts that the unit may give (e.g., WAIT).
4. When the unit displays BLNK, it is running a blank test. Either a zero (0) or VOID will be displayed. If VOID is displayed, the instrument is not clear of alcohol. Start over by depressing the SET button again.
5. Once zero (0) is displayed, if the instrument is ready to test, it will display TEST.

TESTING PROCEDURES BREATH ALCOHOL SCREENING

6. Instruct the offender to take a deep breath, hold it, and then blow steadily through the mouthpiece for as long as s/he can. A (+) will appear indicating that the instrument is sensing the breath flow. If a (+) does not appear, stop the offender and instruct him/her to blow with more force.
7. When the offender has blown a minimum volume of breath, a (++) will appear. The sample will be taken ONLY if the condition has been met and when the breath flow diminishes.
8. As soon as a successful breath sample has been taken, the busy signal (</>) will appear to indicate that the instrument is analyzing the breath sample. A sample with no alcohol will result in a zero (0) reading almost instantly. A breath sample containing alcohol will register a 3-digit display in about 10-40 seconds. The final reading will be accompanied by a 3-tone beep.
9. Press the SET button and the RELEASE button to eject the mouthpiece, then discard it.
10. The Alco-Sensor IV should remain idle for at least one minute following a positive test reading.

ALCO-SENSOR FST

1. Verify that the offender has not had anything in his/her mouth for 15 minutes before testing.
2. Attach a new mouthpiece.
3. The standard operating temperature should be between 0-50 degrees Celsius. If the temperature is outside this range, the instrument will indicate this condition and power itself off. If this occurs, take steps to bring the temperature within the operating range.
4. When the display shows the icon of a person's head flashing and/or BLO is displayed, instruct the offender to take a deep breath, hold it, and then blow steadily through the mouthpiece for as long as s/he can.
5. The icon of the head will stop flashing and a dash will appear to the right of the head. This indicates that the instrument senses sufficient breath flow.
6. Once 3 dashes appear, an automatic sample will be taken.
7. As soon as a successful breath sample has been captured, a series of dashes will scroll across the display. At the end of the analysis, a result will be displayed.
8. The result will be displayed for 15 seconds before the instrument will power itself off.
9. Remove and discard the mouthpiece.
10. To initiate a subsequent test, press the ON button to restart the instrument.

TESTING PROCEDURES ORAL FLUID

1. Before opening the oral collector, check the expiration date. Do not use beyond the expiration date.
2. Make sure the offender has not consumed food or beverage for at least 10 minutes before collecting the saliva sample.
3. Open the packet containing the test kit in full view of the offender.
4. Remove the collector from the foil pouch package.
5. Have the offender place the collector under his/her tongue and close his/her mouth.
6. Instruct the offender not to chew on the pad, talk, or remove the collector from his/her mouth until directed to do so.
7. When the indicator on the collector turns blue, have the offender hold the transport tube in an upright position and open the tube by pushing up on the cap with his/her thumb. **DO NOT STAND THE TUBE ON A TABLE. DO NOT SPILL OR EMPTY THE LIQUID FROM THE TUBE.**
8. Instruct the offender to insert the collector into the uncapped transport tube and replace the cap.
9. Instruct the offender to snap the cap firmly closed while continuing to hold the tube upright.
10. Place the center of the specimen seal over the top of the tube and secure to both sides.
11. Complete the contracted lab form, attach the ID sticker from the form to the specimen, and follow Processing Specimens for Contracted Lab - Chain of Custody Assurance (Attachment 2).

TESTING PROCEDURES URINE

1. Ensure the appropriate acknowledgment form has been completed.
2. Check the offender's identification to verify identity, name, and DOC number.
3. Before collecting the specimen, inform the offender that refusal/failure to provide a specimen within one hour will result in a violation.
4. Facilitate the urine collection in a secure, private, and sanitary area. Do not allow unsupervised access to water fountains, faucets, soap, cleaning agents, or other materials which can dilute or alter the specimen.
5. Always wear protective gloves during the observed collection process.
6. The offender will be allowed up to one hour to provide a urine specimen. During this process, the offender may not ingest more than 8 ounces of water. Place the container in a secured area until the offender is able to provide the specimen.
 - a. In Prisons:
 - 1) Offenders with a valid Health Status Report (HSR) documenting a medical condition that causes difficulty urinating will be provided an additional hour to provide a urine sample.
 - 2) Offenders who indicate they are unable to produce a sample will be directed to sign DOC 14-174 Acknowledgment of Drug/Alcohol Testing Time Requirements.
7. Ensure the offender thoroughly washes his/her hands without soap and dries them with materials provided, or the offender may wear protective gloves provided.
8. The offender will remove any jacket or coat, lift his/her shirt to expose his/her midriff, and roll up long sleeves. If a strip search is being conducted in conjunction with the urine collection, the offender will be allowed to dress before proceeding with the urine collection.
9. Before providing the sample, male offenders will allow their pants/jeans and underwear to fall to their ankles for visual observation of the container and the offender's hands/genital area.
10. Female offenders will provide a urine sample into a "hat" provided.
11. Inspect the offender's hands and fingernails for possible contaminants before s/he provides the specimen.
12. Before opening the foil pouch, check the expiration date. Do not use beyond the expiration date.

TESTING PROCEDURES

URINE

13. Ensure that the specimen cup being used is at room temperature (i.e., 59-86 degrees Fahrenheit).
14. Open the pouch and remove the cup.
15. Hand the cup and lid to the offender and allow him/her to visually inspect it.
16. Instruct the offender to fill the cup approximately 1/3 full.
17. When the offender has finished providing the specimen, the test will start. Have the offender place the lid on the cup and tighten.
18. Set the specimen cup on a flat surface.
19. Read the temperature strip within 4 minutes of the offender providing the specimen to verify that the temperature of the specimen is within acceptable range (i.e., 90-100 Fahrenheit). If no temperature is visible, the test may be repeated with a new sample.
20. Allow the test to run until the control line (i.e., reddish purple line next the "C") appears, which generally takes 3 to 5 minutes. Once the control line appears, the results may be interpreted. If no control line appears after 10 minutes, the cup is considered invalid, and the test should be repeated with a new sample.
21. Results are based on the presence or absence of a line next to each specific drug. Line intensity may vary between drugs. Any line, regardless of intensity, will be interpreted as a negative test.
22. A positive test is no line, totally devoid of color, next to a specific drug.
23. If an adulterant strip is used, and the strip reads that the sample is out of normal range, the specimen is consistent with being diluted, and the offender will be charged with a violation.
24. If lab confirmation is being requested, complete the contracted lab form, attach the ID sticker from the form to the specimen, and follow Processing Specimens for Contracted Lab - Chain of Custody Assurance (Attachment 2).
25. If lab confirmation is not being requested, dispose of urine specimens according to established protocols. Note: Urine is not a bio-hazard.



INCIDENT REPORT

☐ Confidential

Date/Time of Incident 12/11/16	Offenders Involved: Bufalini, Paul	DOC Number 306464	Living Unit 217-5
Location PHWR/ UA room	Witnesses Involved:		
Use of Force Incident? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
Description of Incident: failed urinalysis	Employees/Contract Staff/Volunteers Involved: O/Fechtler		

DETAILS: Who was involved, what took place, how did it happen, description of any injuries, damage, use of force, etc. Attach additional sheet, if necessary.

2129 - On 12/11/16 Res. Bufalini, Paul DOC#306464 was notified at control area he would need to produce urinalysis (UA)


2130 - Res. Bufalini, Paul informed staff he was ready to yield UA

2133 - Res. Bufalini, P. yielded UA to O/Brown which tested pos. for MOP

2134 - O/Fechtler was called back to UA room to verify results, res. Bufalini initial security tab sample was secured and placed in refrigerator in UA room

Res. Bufalini stated he never takes any prescribed drugs of any kind, the only over-the-counter drug he took was Aleve, yesterday sometime on 12/10/2016.

Immediate Action Taken: Urine sample secured, resident pending on Full NSO pending investigation by CCO

	12/11/16	facility monitor	W. Brown
Signature	Date	Title	Name (Please Print)

TO BE COMPLETED BY SUPERINTENDENT/DESIGNEE

Date/Time Received		Incident Number
Investigation Assigned To	By	Date

Comments:

Signature	Date
-----------	------

The contents of this document may be eligible for public disclosure. Social Security Numbers are considered confidential information and will be redacted in the event of such a request. This form is governed by Executive Order 00-03, RCW 42.56, and RCW 40.14.

Distribution: ORIGINAL-Superintendent

COPY- Chief Investigator

DOC 21-917 (Rev. 10/23/15)

DOC 390.350, DOC 420.080, DOC 420.150, DOC 420.250, DOC 420.255, DOC 420.360, DOC 420.390,
DOC 420.500, DOC 420.550, DOC 620.200, DOC 630.550, DOC 890.620

Scan Code GM02

EXHIBIT

5



WORK RELEASE MAJOR INFRACTION REPORT

STAFF REPORT

Offender Name: Bufalini, Paul DOC #: 306464 Date: 12/11/16

Rule # violated: 752 Time: 2133

Facility: PHWR

Description of Infraction Behavior (Include details such as who, when, where, what):

2129 - On 12/11/16 Res. Bufalini, Paul DOC#306464 was notified at control area he would need to produce urinalysis (UA)

2130 - Res. Bufalini, Paul informed staff he was ready to yield UA

2133 - Res. Bufalini, P. yielded UA to O/Brown which tested pos. for MOP

2134 - O/Fechtler was called back to UA room to verify results, res. Bufalini initial security tab sample was secured and placed in refrigerator in UA room

Res. Bufalini stated he never takes any prescribed drugs of any kind, the only over-the-counter drug he took was Aleve, yesterday sometime on 12/10/2016.

Witnesses: O/Fechtler

[Signature]
Reporting Employee Signature

12/11/16
Date

OFFENDER COMMENTS(Optional)

Offender version/reason for the behavior

[Empty box for Offender Comments]

[Signature]
Offender Signature

12-19-16
Date

The contents of this document may be eligible for public disclosure. Social Security Numbers are considered confidential information and will be redacted in the event of such a request. This form is governed by Executive order 00-03, RCW 42.56, and RCW 40.14

Distribution: ORIGINAL - Central File
DOC 20-437 (Rev. 04/15/14)

COPY - Offender, Work Release File, Board File, Duty Desk, Hearings File

DOC 460.135

EXHIBIT

6

EXHIBIT 7



WORK RELEASE NOTICE OF ALLEGATIONS, HEARING, RIGHTS, AND WAIVER

Offender Name BUFALINI, Paul	DOC # 306464	Date 12/13/16	Present Location WCC
CCO Name Kelly Dean Facility PHWR		Present Custody Status MI1 Present Custody Score 72	
Infraction(s) alleged: (Include Infraction # Behavior/Date) 752 - Receiving a positive test for use of unauthorized drugs, alcohol, or other intoxicants on/before 12/11/16.			
Hearing Date 12/20/16	Time 2:30 TSD	<input type="checkbox"/> a.m. <input checked="" type="checkbox"/> p.m.	Location WCC

You have been charged with violating work release rules/conditions. You have the following rights:

- ◆ To receive written notice of the alleged violations not less than twenty-four hours (24) prior to the hearing unless notice is waived in writing by you.
- ◆ To, in preparation for the hearing, ask the hearing officer that certain department or contract staff members, other work release offender, and other persons be present as witnesses at the hearing. The hearing officer shall grant such request if it is determined by the hearing officer that to do so would not be unduly hazardous to the work/training release facility's safety or correctional goal: Provided, however, limitations may be made by the hearing officer if the information to be presented by the witnesses is deemed to be irrelevant, duplicative, or unnecessary to the adequate presentation of your case.
- ◆ To be present at all stages of the hearing, except during deliberation in appropriate circumstances.
- ◆ To have an electronically recorded hearing conducted within eight (8) working days of suspension of your work/training release plan unless a longer time is approved by the Hearings Administrator or their designee.
- ◆ To present documentary evidence and to call witnesses approved by the hearing officer.
- ◆ To have a neutral and detached hearing officer conduct your hearing.
- ◆ To present your own case to the hearing officer. If there is a language or communications barrier, the hearing officer shall appoint an advisor.
- ◆ To confront and cross-examine only those witnesses appearing and testifying at the hearing at the discretion of the hearing officer.
- ◆ To testify during the hearing or remain silent. Your silence will not be held against you.
- ◆ To admit to any or all of the allegations. This may limit the scope of the hearing.
- ◆ To waive your right to a hearing by signing an admission of the allegation and request that the hearing be dispensed with entirely or limited only to questions of disposition.
- ◆ To receive a written Hearing and Decision Summary including the evidence presented, a finding of guilty or not guilty, the sanctions imposed, and the reasons to support the findings of guilt and the sanction imposed immediately following the hearing or, in the event of a deferred decision, within two (2) working days.
- ◆ To receive a copy of the full Department of Corrections Hearing Report.
- ◆ To appeal to the Regional Appeals Panel, in writing, within seven (7) calendar days of your receipt of the Hearing and Decision Summary.
- ◆ To obtain a copy of the audio recording of the hearing by requesting it in writing at the address below. To waive any or all of the above rights.

DOC REGIONAL APPEALS PANEL
1016 So. 28th ST. 3rd Floor
Tacoma WA 98409

Admission to Allegations

I admit to the following allegations:

Offender Signature	Date	Time
Witness Signature/Position	Date	Time

In admitting the violation(s) and waiving the hearing, I understand that a report will be submitted which may result in the loss of work/training release status, good time credits and or the extension of the minimum term.

Waiver of Hearing

Offender Signature	Date	Time
Witness Signature/Position	Date	Time

I have read and understand the allegation(s), the hearing notice, and my rights as described:

Offender Signature <i>[Signature]</i>	Date <i>12-16-16</i>	Time <i>8:40 PM</i>
Witness Signature/Position <i>[Signature]</i>	Date <i>12-19-16</i>	Time <i>8:45 PM</i>

TYPIST / CCO / 09-230
DATE

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Distribution: ORIGINAL - Hearing File COPY - Offender, Work Release and/or Field File



HEARING AND DECISION SUMMARY REPORT

Release from DOC Custody/Confinement: ☐ Yes ☐ No (See Confinement Order DOC 09-238)

Offender Name (Last, First) <u>Bufalini, Paul</u>	DOC # <u>306464</u>	RLC <u>HV</u>	Date of Birth <u>[REDACTED]</u>
Cause Number(s) <u>131019240</u>			

Offender Status ☐ CCI ☐ CCP ☐ CCJ ☐ CCM ☐ CPA ☐ DOSA ☒ W/R ☐ FOS
☐ Misdemeanor/Gross Misdemeanor

Date of Hearing 12/20/16 Location of Hearing WCC

CCO Name CCO Kelly Dean

Other Participants _____

Waived Appearance ☐ Yes ☒ No
Competency Concern ☐ Yes ☒ No
Waived 24 Hour Notice ☐ Yes ☒ No
Interpreter/Staff Assistant ☐ Yes ☒ No
Jurisdiction Confirmed ☒ Yes ☐ No
Appeal Form Provided ☒ Yes ☐ No

Preliminary Matters:

None reported

ALLEGATIONS	PLEA	FINDING Guilty/Not Guilty Probable Cause Found
D#252 o/s 12/11/16	NG	Guilty

EVIDENCE RELIED UPON (LIST):

☐ J&S ☐ Notice of Allegation, Hearing, Rights and Waiver form ☐ Report of Alleged Violations
☐ Conditions, Requirements, and Instructions form ☐ Chronological Reports ☐ CCO Testimony
☐ Offender Testimony ☐ Negotiated Sanction ☐ Other (listed below):

Distribution: **Original** – Hearing File, **Copy** – Offender, Field File, Receiving/detaining Facility



HEARING AND DECISION SUMMARY REPORT

SUMMARY OF FACTS PRESENTED/ REASONS FOR FINDINGS:

P pled not guilty to the listed allegation. P denied using any substance. P states he has been clean and sober for years and would not be willing to mess up his recovery. P was found guilty based on the testimony provided at the time of the hearing.

SANCTIONS AND REASONS FOR SANCTION:

Termination of the WRT status and 20 days loss of good conduct time

****Obey all Facility Rules**

****Comply with CCO, CCS, and Hearing Officer directives**

****Report in Person to CCO Within one Business Day of Release**

Offender Name (Last, First):

DOC #

Bufelini

306464

X *[Signature]*
Offender Signature

12/20/16
Date

[Signature]
Hearing Officer Signature

S Jackson
Hearing Officer Name (Print)

The contents of this document may be eligible for public disclosure. Social Security Numbers are considered confidential information and will be redacted in the event of such a request. This form is governed by Executive Order 00-03, RCW 42.56, and RCW 40.14.

Distribution: Original - Hearing File, Copy - Offender, Field File, Receiving/detaining Facility



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
P.O. BOX 41100 • Olympia, Washington 98504-1100
APPEALS PANEL DECISION

FROM: DOC Appeals Panel

TO: Bufalini, Paul

DOC #: 306464

Date: January 9, 2017

On December 20, 2016, you were either sanctioned to 1-3 days of confinement or a hearing was conducted for violations of your conditions of supervision/custody.

On or about 12-23-16, your appeal was received in which you requested a review of a sanction or decision of the Hearing Officer. Your appeal is based on:

- ☐ A procedural issue.
- ☐ A jurisdictional issue.
- ☒ The finding of guilt.
- ☐ The sanction imposed.

The Hearings Panel has reviewed your appeal request. The Panel has reviewed the Discovery material and listened to the recording of the hearing, **AND THEREFORE** the decision is to:

- ☒ Affirm the process and decision.
- ☐ Modify the sanction as stated below.
- ☐ Remand for a hearing. You will be notified of the hearing date.
- ☐ Reverse the hearing decision.
- ☐ Vacate the violation process.

Comments: Mr. Bufalini, you appealed your hearing based on the adverse finding. You argue you are not guilty, the cup is not 100% accurate and imply it should be sent to the lab. Further you have not been in trouble for 2 years so why would someone jeopardize their sentence with 2 weeks left. Your remedy is to maintain your sentence.

In reviewing the evidence and recording the panel found that the Hearing Officer acted in a fair and impartial manner when entering your finding. The Hearing Officer appropriately weighed the evidence provided and contrary to your plea, the most persuasive evidence was the urinalysis test collected which resulted in a positive test for a controlled substance. The evidence supports the proper protocol and policy along with a witness observation validated the result. There was no requirement for further testing as existing policy regarding the accuracy of the urinalysis test supports this finding. The appeal panel affirms the finding and subsequent sanction as it was within the disciplinary sanction guidelines.

Jeff Mayeda, DOC Appeals Panel Member

1-9-17

Date

Carol S. Nickerson, DOC Appeals Panel Member

1-9-17

Date



NOTICE OF ALLEGATIONS, HEARING, RIGHTS, AND WAIVER

Offender Name Paul Bufalini	DOC # 306464	Date 12/28/16	Present Location WCC
Type of Hearing: (Check all that apply) <input type="checkbox"/> Community Custody <input type="checkbox"/> Community Custody Maximum (CCM) <input checked="" type="checkbox"/> 762 DOSA Revocation <input checked="" type="checkbox"/> DOSA <input type="checkbox"/> DOSA Deportation Dispositional <input type="checkbox"/> FOS <input type="checkbox"/> Misdemeanor/Gross Misdemeanor <input type="checkbox"/> Negotiated Sanction			
Type of Allegation: (Check one) <input type="checkbox"/> Violation of Community Custody conditions. <input checked="" type="checkbox"/> Violation of your Drug Offender Sentencing Alternative (DOSA) sentence. 1) 762 - Failing to complete or administrative termination from DOSA substance abuse treatment program on or about 12/15/16. (This infraction must be initiated by authorized staff and heard by a Community Corrections Hearing Officer in accordance with WAC 137-24 on 8/23/16, by being terminated from substance abuse treatment.) <input type="checkbox"/> A valid ICE deportation order was issued on _____, thereby making you ineligible for the DOSA previously granted.			
You are hereby notified that a Department hearing is scheduled for: Hearing Date Time <input type="checkbox"/> a.m. Location Cause #(s) 1/4/17 2:45 <input checked="" type="checkbox"/> p.m. WCC AE/AF-13-1-01924-0			
The Department intends to present the following documents/reports and/or call the following witnesses during the hearing: Initial Serious Infraction Report, Expectation for Custody Facility Plan, Handbook Receipt, Work Release Standard Rules, DOSA Letter, Substance Use Disorder Treatment Participation Requirements, Substance Use Disorder Prison DOSA Agreement, CD Discharge Summary and DOSA Judgment and Sentence.			

If you are found guilty at hearing, the Department may respond by:

For Community Custody hearings:

1. Imposing the existing supervision plan,
2. Imposing the existing supervision plan, with increased monitoring, treatment, or programming,
3. Placing me in Work Release or total confinement in a jail or Prison, as well as imposing the existing supervision and any additional reporting or program enhancement, or
4. Recommending that the sentencing court, if appropriate and/or applicable, take further action.
5. Revoking the sentence structure to require that the remaining balance of the original sentence be served in a jail or Prison. (Prison DOSA only)
6. Imposing up to the remaining return time to be served in a jail or Prison. (CCP/CCI only)

For 762 DOSA revocation hearings:

1. Recommending transfer to another facility, or
2. Reclassifying/revoking the sentence structure in this case to require that the remaining balance of the original sentence be served.

You have the following rights:

- ◆ To receive written notice of the alleged violations or ICE deportation order.
- ◆ To have an electronically recorded hearing, conducted within 5 business days of service of this notice. However, if you have not been placed in confinement, the hearing will be conducted within 15 calendar days of service of this notice.
- ◆ To have a neutral Hearing Officer conduct your hearing.
- ◆ To examine, no later than 24 hours before the hearing, all supporting documentary evidence which the Department intends to present during the hearing.
- ◆ To admit to any or all of the allegations. This may limit the scope of the hearing.
- ◆ To be present during all phases of the hearing. If you waive your right to be present at the hearing, the Department may conduct the hearing in your absence and may impose sanctions that could include loss of liberty.
- ◆ To present your case to the Hearing Officer. If there is a language or communication barrier, the Hearing Officer will ensure that someone is appointed to interpret or otherwise assist you.
- ◆ To confront and cross-examine witnesses testifying at the hearing.
- ◆ To testify during the hearing or remain silent. Your silence will not be held against you.

- ◆ To have witnesses provide written or telephonic testimony on your behalf. The Hearing Officer may exclude individuals from the hearing for specifically stated reasons, and the facility may exclude the public for safety, security, or capacity concerns. The Hearing Officer may require a witness to testify outside of your presence when there is a substantial likelihood that the witness will not be able to give effective, truthful testimony or would suffer significant psychological or emotional trauma if required to testify in your presence. In either event, you may submit a list of questions to ask the witness(es). Testimony may be limited to evidence relevant to the issues under consideration.
- ◆ To request a continuance of the hearing.
- ◆ To receive a written Hearing and Decision Summary Report specifying the evidence presented, a finding of guilty or not guilty, and the reasons supporting findings of guilt, and the sanction imposed, immediately following the hearing or, in the event of a deferred decision, within 2 business days unless you waive this timeframe.
- ◆ To obtain a copy of the electronic recording of the hearing by sending a written request to: Department of Corrections, P.O. Box 41103, Olympia, WA 98504-1103.
- ◆ To appeal a sanction to the Appeals Panel, in writing, within 7 calendar days of your receipt of the Hearing and Decision Summary. You may also file a personal restraint petition to appeal the Department's final decision through the Court of Appeals.
- ◆ To waive any or all of the rights listed.

**DEPARTMENT OF CORRECTIONS
APPEALS PANEL
P.O. Box 41103
Olympia, WA 98504-1103**

will call witness

I have read and understand the allegation(s), the hearing notice, and my rights as described:

Offender Signature <i>Paul Belf...</i>	Date <i>1-3-17</i>	Time <i>8:30</i>
Witness Signature/Position <i>[Signature]</i>	Date <i>1-3-17</i>	Time <i>8:45 AM</i>

Admission to Allegations/Waiver of Presence at Hearing

In admitting to the allegation(s) or waiving my presence at the hearing, I understand that the Department may still schedule and conduct a hearing. I further understand that if I am found guilty, the Department may respond as described above.

I admit to the following allegations:		
Offender Signature	Date	Time
Witness Signature/Position	Date	Time

☐ I waive my right to appear at the hearing.

Offender Signature	Date	Time
Witness Signature/Position	Date	Time

CCO/TYPIST/09-231
DATE

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Distribution: ORIGINAL - Hearing File COPY - Offender, Field File



HEARING AND DECISION SUMMARY REPORT

Release from DOC Custody/Confinement: ☐ Yes ☒ No (See Confinement Order DOC 09-238)

Offender Name (Last, First) BUFALINI, PAUL	DOC # 306464	RLC HV	Date of Birth [REDACTED]
Cause Number(s) PERCE 13-1-01924-0			

Offender Status ☐ CCI ☒ CCP ☐ CCJ ☐ CCM ☐ CPA ☒ DOSA ☐ W/R ☐ FOS
☐ Misdemeanor/Gross Misdemeanor

Date of Hearing **1-4-17** Location of Hearing **WCC**

CCO Name **B. OVARAA**

Other Participants **David Bufalini** **[REDACTED]**

Waived Appearance ☐ Yes ☒ No

Competency Concern ☐ Yes ☒ No

Waived 24 Hour Notice ☐ Yes ☒ No

Interpreter/Staff Assistant ☐ Yes ☒ No

Jurisdiction Confirmed ☒ Yes ☐ No

Appeal Form Provided ☒ Yes ☐ No

Preliminary Matters: _____

ALLEGATIONS	PLEA	FINDING Guilty/Not Guilty/ Probable Cause Found
#762 - Failing to complete admin term from DOSA Substance abuse TX program 12-15-16	NG	G

EVIDENCE RELIED UPON (LIST):

☒ J&S ☒ Notice of Allegation, Hearing, Rights and Waiver form ☒ Report of Alleged Violations
☐ Conditions, Requirements, and Instructions form ☒ Chronological Reports ☐ CCO Testimony
☐ Offender Testimony ☐ Negotiated Sanction ☒ Other (listed below):

**Facility Plans, Email from CDP, Response to term
of DOSA, DOSA Agreement, Discharge Summary
12-20-16 Hearing Decision Summary (WR)**

Distribution: **Original** – Hearing File, **Copy** – Offender, Field File, Receiving/detaining Facility



HEARING AND DECISION SUMMARY REPORT

SUMMARY OF FACTS PRESENTED/ REASONS FOR FINDINGS:

Δ plsd "NG" - Δ called father to testify - David Bufalini - States Δ was always under sup of family, no visitors, as far as father knows Δ never had any violation Δ father states Δ never missed a class for CD TX Δ was employed and spoke of date of release which is tomorrow. Mr. Bufalini doesn't suspect that Δ had been using. Δ addressed prior hearing that Δ should have had the right for a re-test of sample. Δ thinks lesser sanction would be better than revocation. Δ testified to TX prix TC, Program was strong and had a job never missed work. for a house - Δ asked for another UA test of the specimen

SANCTIONS AND REASONS FOR SANCTION:

Δ arrived 8:10 - 8:23 employed - no infractions - going to classes. - Δ terminated from w/R TX. program - mandatory revocation.

*SANCTION: DOSA REVOKED FOR PERCELO CAUSE B-09240

DOC RECORDS WILL RECALCULATE RELEASE DATE.

- **Obey all Facility Rules
- **Comply with CCO, CCS, and Hearing Officer directives
- **Report in Person to CCO Within one Business Day of Release

Offender Name (Last, First):

Bufalini, Paul

DOC #

306464

1-4-16

Date

Offender Signature:

[Signature]

Hearing Officer Signature

JEFF KASLER

Hearing Officer Name (Print)

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Distribution: Original - Hearing File, Copy - Offender, Field File, Receiving/detaining Facility

1-12 APPEAL PANEL DATE



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

HEARING DECISION WAIVER

OFFENDER NAME BUFFALINI, PUAL	DOC # 306464	IF INTERSTATE COMPACT FOS # _____ SENDING STATE _____
---	------------------------	---

I have been advised that it is a requirement that a written Hearing and Decision Summary be issued immediately following the hearing, or, in the event of a deferred decision, within two (2) working days of the hearing. I hereby waive the requirement for a decision within two (2) working days in my case.

Paul Bufalini

OFFENDER SIGNATURE

1-4-17

DATE

[Signature]

WITNESS SIGNATURE

Jeff Kessler

HEARING OFFICER SIGNATURE

Distribution: **WHITE** - Hearing File **CANARY** - Central File **PINK** - Offender **COPY** - Interstate Compact (If applicable)



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

Hearings Unit

P.O. Box 41103, Olympia, WA 98501-1103

February 8, 2017

David Bufalini
Attorney at Law
2107 N 30th Street
Tacoma, WA 98403-3318

I'm writing in response to your letter dated February 3, 2017. You request the Department of Corrections investigate the circumstances leading to your son, Paul Bufalini, DOC 306464, incarceration and revocation of his Drug Offender Sentence Alternative status, and his new release date in February 2019.

I've reviewed Paul's hearing and sanction imposed on January 31, 2017. His hearing is remanded. A new hearing will be scheduled immediately and he will be notified.

Sincerely,

Dominga Soliz,
Hearing Administrator

cc: Electronic File
Paul Bufalini

WR



NOTICE OF ALLEGATIONS, HEARING, RIGHTS, AND WAIVER

Offender Name — Paul Bufalini	DOC # — 306464	Date — 2/15/17 7	Present Location — WCC
Type of Hearing: (Check all that apply) <input type="checkbox"/> Community Custody <input type="checkbox"/> Community Custody Maximum (CCM) <input checked="" type="checkbox"/> 762-DOSA <input type="checkbox"/> DOSA <input type="checkbox"/> DOSA Deportation Dispositional <input type="checkbox"/> FOS <input type="checkbox"/> Misdemeanor/Gross Misdemeanor <input type="checkbox"/> Negotiated Sanction			
Type of Allegation: (Check one) <input type="checkbox"/> Violation of Community Custody conditions. <input checked="" type="checkbox"/> Violation of your Drug Offender Sentencing Alternative (DOSA) sentence. 1) 762 - Failing to complete or administrative termination from DOSA substance abuse treatment program on or about 12/15/16. (This infraction must be initiated by authorized staff and heard by a Community Corrections Hearing Officer in accordance with WAC 137-24 on 8/23/16, by being terminated from substance abuse treatment.) <input type="checkbox"/> A valid ICE deportation order was issued on _____, thereby making you ineligible for the DOSA previously granted.			
You are hereby notified that a Department hearing is scheduled for: Hearing Date: — 2/22/17 Time: — 2:30 p.m. Location: — WCC Cause #(s): AE/AF-13-1-01924-0			

The Department intends to present the following documents/reports and/or call the following witnesses during the hearing:
Initial Serious Infraction Report, Expectation for Custody Facility Plan, Handbook Receipt, Work Release Standard Rules, DOSA Letter, Substance Use Disorder Treatment Participation Requirements, Substance Use Disorder Prison DOSA Agreement, CD Discharge Summary and DOSA Judgment and Sentence.

If you are found guilty at hearing, the Department may:

- ◆ Place you in Work Release or total confinement in a jail or prison, as well as impose the existing supervision and any additional reporting or program enhancement;
- ◆ Recommend that the sentencing court, if appropriate and/or applicable, take further action;
- ◆ Revoke the sentence structure to require that the remaining balance of the original sentence be served in a jail or prison and/or recommend transfer to another facility (Prison DOSA only);
- ◆ Impose up to the remaining return time to be served in a jail or prison (CCP/CCI only).

You have the following rights:

- ◆ To receive written notice of the alleged violations or ICE deportation order.
- ◆ To have an electronically recorded hearing, conducted within 5 business days of service of this notice. However, if you have not been placed in confinement, the hearing will be conducted within 15 calendar days of service of this notice.
- ◆ To have a neutral Hearing Officer conduct your hearing.
- ◆ To examine, no later than 24 hours before the hearing, all supporting documentary evidence which the Department intends to present during the hearing.
- ◆ To admit to any or all of the allegations. This may limit the scope of the hearing.
- ◆ To testify during the hearing or remain silent. Your silence will not be held against you.
- ◆ To be present during all phases of the hearing. If you waive your right to be present at the hearing, the Department will conduct the hearing in your absence and may impose sanctions that could include loss of liberty.
- ◆ To present your case to the Hearing Officer. If there is a language or communication barrier, the Hearing Officer will ensure that someone is appointed to interpret or otherwise assist you.
- ◆ To request appointed counsel if you do not agree to a Negotiated Sanction and your hearing is regarding a Prison DOSA, CCP, or CCI cause and you have more than 30 days revocation or return time remaining. Counsel will be appointed if the Hearing Officer determines that counsel is necessary due to the complexity of your case or your ability to represent yourself.

- ◆ To have witnesses provide written or oral testimony on your behalf. The Hearing Officer may exclude individuals from the hearing for specifically stated reasons, and the facility may exclude the public for safety, security, or capacity concerns. The Hearing Officer may require a witness to testify outside of your presence when there is a substantial likelihood that the witness will not be able to give effective, truthful testimony or would suffer significant psychological or emotional trauma if required to testify in your presence. In either event, you may submit a list of questions to ask the witness(es). Testimony may be limited to evidence relevant to the issues under consideration.
- ◆ To request a continuance of the hearing for good cause.
- ◆ To confront and cross-examine witnesses testifying at the hearing.
- ◆ To receive a written Hearing and Decision Summary Report specifying the evidence presented, a finding of guilty or not guilty, and the reasons supporting findings of guilt, and the sanction imposed, immediately following the hearing or, in the event of a deferred decision, within 2 business days unless you waive this timeframe.
- ◆ To obtain a copy of the electronic recording of the hearing by sending a written request to: Department of Corrections, P.O. Box 41103, Olympia, WA 98504-1103.
- ◆ To appeal a sanction to the Appeals Panel, in writing, within 7 calendar days of your receipt of the Hearing and Decision Summary. You may also file a personal restraint petition to appeal the Department's final decision through the Court of Appeals.
- ◆ To waive any or all of the rights listed.

DEPARTMENT OF CORRECTIONS
APPEALS PANEL
P.O. Box 41103
Olympia, WA 98504-1103

☐ I request attorney representation at my hearing. I understand that if counsel is authorized, I may be able to provide my own attorney in lieu of a Department-provided attorney at my own cost, and that I must provide my attorney's name and contact information to the Hearing Officer at the hearing, otherwise the Department will provide the attorney.

Offender Signature _____ Date _____

Community Corrections Officer _____ Date _____

I have read and understand the allegation(s), the hearing notice, and my rights as described:

Offender Signature <i>[Signature]</i>	Date 2-21-17	Time 8:40
Witness Signature/Position <i>[Signature]</i>	Date 2-21-17	Time 8:45

Waiver of Presence at Hearing

In waiving my presence at the hearing, I understand that the Department may still schedule and conduct a hearing. I further understand that if I am found guilty, the Department may respond as described above. I further understand that if I am eligible for a review of attorney representation, by waiving my right to be present at the hearing, I am waiving my right to a review for determination of attorney representation.

☐ I waive my right to appear at the hearing and, if I am eligible, my right to a review for counsel.

Offender Signature	Date	Time
Witness Signature/Position	Date	Time

CCO/TYPIST/09-231
DATE

The contents of this document may be eligible for public disclosure. Social Security Numbers are considered confidential information and will be redacted in the event of such a request. This form is governed by Executive Order 00-03, RCW 42.56, and RCW 40.14.



HEARING AND DECISION SUMMARY REPORT

Release from DOC Custody/Confinement: ☐ Yes ☒ No (See Confinement Order DOC 09-238)

Offender Name (Last, First) <u>Bufalini, Paul</u>	DOC # <u>306464</u>	RLC <u>HV</u>	Date of Birth <u>[REDACTED]</u>
Cause Number(s) <u>Pierce (AE) 13-1-01924-0</u> <u>Pierce (AE) 13-1-01924-0</u>			

Offender Status ☐ CCI ☐ CCP ☐ CCJ ☐ CCM ☐ CPA ☐ DOSA ☒ W/R ☐ FOS
☐ Misdemeanor/Gross MisdemeanorDate of Hearing 2-22-17 ³⁻¹⁻¹⁷ Location of Hearing WCCCCO Name Loren ShumateOther Participants David Bufalini - father x2CO - Kathy JonasCO - Kelly DeanWaived Appearance ☐ Yes ☒ NoCompetency Concern ☐ Yes ☒ NoWaived 24 Hour Notice ☐ Yes ☒ NoInterpreter/Staff Assistant ☐ Yes ☒ NoJurisdiction Confirmed ☒ Yes ☐ NoAppeal Form Provided ☒ Yes ☐ No

Preliminary Matters:

None noted CCO - A made request to be represented
I denied the request because I found no equity issues or unusually complex issues.

ALLEGATIONS	PLEA	FINDING Guilty/Not Guilty Probable Cause Found
1) 762) Failing to complete or administrative termination from DOSA substance abuse treatment program on or about 12-15-16.	NG	Guilty

EVIDENCE RELIED UPON (LIST):

☒ J&S ☒ Notice of Allegation, Hearing, Rights and Waiver form ☒ Report of Alleged Violations
☒ Conditions, Requirements, and Instructions form ☐ Chronological Reports ☒ CCO Testimony
☒ Offender Testimony ☐ Negotiated Sanction ☒ Other (listed below): Initial Serious Infract Report;
Work Release Major Infract Report; Incident Report; Handbook
Receipt; Expectations; Letter Re: Response to PT Complete or Admin
Term from SIA tx; Email; tx part. req;

Distribution: Original - Hearing File, Copy - Offender, Field File, Receiving/detaining Facility



HEARING AND DECISION SUMMARY REPORT

SUMMARY OF FACTS PRESENTED/ REASONS FOR FINDINGS:

David Bufalini - Father - spoke to S.I.F. - review circumstances
containing messages - about urine - complicated due process
issues here - if UA destroyed - Not qualified or trained - in
combination w/ consequence - Schlegel - w/ entitled to know
whether UA was preserved or destroyed -
3-1-17 - Denied request for counsel - I find no equity issues
on unusually complex issues.
CCO ^{Dean} Handbook - signed 8-11-15. Expectations - DOSA letter -
Futural Serious Refraction Report - verbatim - Received Discharge
Summary - 12-15-16. Email - Dosa to start on 8-17-16.
Dosa agreement - last page - comply w/ programs. S.I. use discharge

SANCTIONS AND REASONS FOR SANCTION:

Summary - COP - Summary of progress - positive for opiates -
terminated 12-15-16 - Discharge Summary - applying - terminated
positive UA for opiates -
A - No Questions -
David Bufalini - Question

D - check 26 months - 2 weeks to release date -
concerned about false/positive -

- **Obey all Facility Rules
- **Comply with CCO, CCS, and Hearing Officer directives
- **Report in Person to CCO Within one Business Day of Release

Offender Name (Last, First):

Bufalini, Paul

DOC #

306464

Offender Signature

Date

2-22-17

Hearing Officer Signature

Hearing Officer Name (Print)

Paul Ockerman

The contents of this document may be eligible for public disclosure. Social Security Numbers are considered confidential information and will be redacted in the event of such a request. This form is governed by Executive Order 00-03, RCW 42.56, and RCW 40.14.

Distribution: Original - Hearing File, Copy - Offender, Field File, Receiving/detaining Facility



HEARING AND DECISION SUMMARY REPORT

SUMMARY OF FACTS PRESENTED/ REASONS FOR FINDINGS:

David - took every opportunity for social visit - straight to house - never left, never stopped, never late - never done any use any drugs - working full time - never missed day of work - excited working learning wage - No indication that drugs were taken, never visibly under influence of drugs - credible/believable -
Custody - A terminated/discharged from tx -
Adjustment - CCO - Arrived 8-10-16 - started work 8/15 - no interactions - please/thank you/ no complaints/ did what he needed to do until tx -
VA - A - Everything I needed to do.
Recommendation - CCO - Per policy/procedure Revoke DOSA -
A - Opportunity to complete DOSA - Everything I could do

SANCTIONS AND REASONS FOR SANCTION

Revoke DOSA, start date to be determined by DOC records -

A was terminated from DOSA tx - Revoke

- **Obey all Facility Rules
- **Comply with CCO, CCS, and Hearing Officer directives
- **Report in Person to CCO Within one Business Day of Release

Offender Name (Last, First):

Bufalini, Paul

DOC #

306464

Offender Signature

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STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
P.O. BOX 41100 • Olympia, Washington 98504-1100
APPEALS PANEL DECISION

FROM: DOC Appeals Panel

TO: Mr. Paul Bufalini

DOC #: 306464

Date: 4/4/17

On 3/1/17, you were either sanctioned to 1-3 days of confinement or a hearing was conducted for violations of your conditions of supervision/custody.

On 3/7/17, your appeal was received in which you requested a review of a sanction or decision of the Hearing Officer. Your appeal is based on:

- ☐ A procedural issue.
- ☐ A jurisdictional issue.
- ☐ The finding of guilt.
- ☒ The sanction imposed.

The Hearings Panel has reviewed your appeal request. The Panel has reviewed the Discovery material and listened to the recording of the hearing, **AND THEREFORE** the decision is to:

- ☒ Affirm the process and decision.
- ☐ Modify the sanction as stated below.
- ☐ Remand for a hearing. You will be notified of the hearing date.
- ☐ Reverse the hearing decision.
- ☐ Vacate the violation process.

Comments: Mr., Bufalini, this Appeals Panel reviewed the correspondence received and the audio recording of your 2/22/17 and 3/1/17 hearings that were conducted at the Washington Corrections Center (WCC) in Shelton, Wa. To begin, originally you had a work release hearing on 12/20/16 where you were found guilty of controlled substance use. As a result of this hearing, you were terminated from work release and subsequently terminated from chemical dependency treatment. At your 1/4/17 hearing, your DOSA was revoked after you were found to be guilty of a #762 infraction. You had also appealed your 12/20/16 work release hearing and the decision of that hearing had been upheld by an appeals panel.

On 2/8/17, the Hearings Administrator sent correspondence to your father, David Bufalini, indicating that your 1/31/17 hearing had been reviewed and you would be remanded for a new hearing process as a result. On 2/22/17, your remanded hearing took place with another Hearing Officer and a determination was made at that process that you would not be granted representation by counsel for this hearing based on your understanding of the hearing process and ability to defend yourself against the #762 allegation. There was also mention by your father, via telephonic testimony, that the Hearings Administrator indicated in her 2/8/17 correspondence that there was to be a DOC investigation of the circumstances leading to your incarceration. The letter actually states that an investigation leading to your incarceration was requested by your father, not that she was ordering an investigation. Your 2/22/17 hearing was continued on 3/1/17 to give the Hearing Officer an opportunity to speak with the Hearings Administrator regarding the scope of your hearing. The scope of your hearing was determined to look at the DOSA revocation that took place on 1/4/17. At the conclusion of your 3/1/17 remanded hearing, the Hearing Officer made the decision to revoke the DOSA based on RCW 9.94A.662(3). According to RCW 9.94A.662(3), "an offender who fails to complete the program or who is administratively terminated from the program shall be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing court". If someone is terminated from DOSA chemical dependency treatment, revocation of the DOSA is mandatory per the previously stated RCW.

This panel agrees with the decision made by the Hearing Officer and there will be no modifications made to the imposed sanction of DOSA revocation. There were also no noted procedural issues on the part of the Hearing Officer

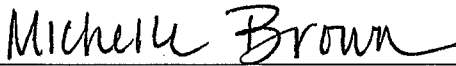
which indicates that the reviewed processes were conducted properly. This panel did not review the 12/20/16 hearing because that process had previously been appealed and the decision was upheld by an Appeals Panel.



Reco Rowe, DOC Appeals Panel Member

4/4/17

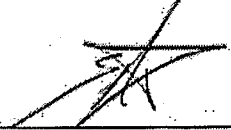
Date



Michelle Brown, DOC Appeals Panel Member

4/4/17

Date



Eric Petersen, DOC Appeals Panel Member

4/4/17

Date

Distribution: **ORIGINAL** - Hearing File **COPY** - Offender, Central or Field File via CCO, Hearing Officer, Hearing Supervisor, Work Release Supervisor, Imaging System

CORRECTIONS DIVISION ATTORNEY GENERAL'S OFFICE

October 02, 2017 - 3:20 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 50785-4
Appellate Court Case Title: PRP of Paul Bufalini
Superior Court Case Number: 13-1-01924-0

The following documents have been uploaded:

- 3-507854_Personal_Restraint_Petition_20171002151922D2980921_1615.pdf
This File Contains:
Personal Restraint Petition - Response to PRP/PSP
The Original File Name was Response-PRP-DOSA.pdf

A copy of the uploaded files will be sent to:

- lobsenz@carneylaw.com

Comments:

Sender Name: Tera Linford - Email: teral@atg.wa.gov

Filing on Behalf of: John Joseph Samson - Email: johns@atg.wa.gov (Alternate Email:)

Address:

Attorney General's Office, Corrections Division
PO Box 40116
Olympia, WA, 98504-0116
Phone: (360) 586-1445

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